# Missouri Attorney General's Opinions - 1996

| Opinion | Date | Topic | Summary |
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| 40-96 | Jan 26 | COUNTY CLASSIFICATION.<br>COUNTY OFFICERS.<br>COUNTY TREASURERS.<br>TERM OF OFFICE. | Under § 48.053, RSMo 1994, when a county changes from third-class to second-class on the same date as the county treasurer's term of office begins, that term is for two years, and subsequent terms are for four years. |
| 53-96 | Feb 14 | HOUSING AUTHORITY.<br>INSURANCE.<br>POLITICAL SUBDIVISIONS. | An association of Missouri housing authorities formed under § 537.620, RSMo 1994, to self-insure their risks may not contract to assume risks of other than Missouri political subdivisions which are members. |
| 55-96 | Feb 1 | AMBULANCE DISTRICTS.<br>CONFLICT OF INTEREST.<br>FIRE PROTECTION DISTRICTS. | Section 321.017, RSMo 1994, prohibits an employee of any fire protection district formed under chapter 321, RSMo 1994, or any ambulance district formed under chapter 190, RSMo 1994, from serving on the board of any fire protection or ambulance district which has full time paid employees. |
| 78-96 | Jan 24 | ASSESSORS.<br>COUNTIES.<br>COUNTY COMMISSIONERS.<br>PENALTIES.<br>PERSONAL PROPERTY ASSESSMENT.<br>PERSONAL PROPERTY TAX. | A county commissioner of a third-class county has no authority to waive penalties for a taxpayer's failure to timely file a personal property list with the assessor as required by Section 137.280, RSMo 1994. |
| 80-96 | Jan 12 | CITIES, TOWNS AND VILLAGES.<br>FOURTH CLASS CITIES. | No provision of the Clean Indoor Air Act, sections 191.765 through 191.777, RSMo 1994, prohibits a fourth-class city from enacting a more stringent ordinance that regulates smoking. However, any such ordinance must not attempt to permit what that Act prohibits or prohibit what that Act permits. |
| 85-96 | Jan 25 | CIRCUIT CLERKS.<br>COUNTY CLASSIFICATION.<br>COUNTY OFFICERS.<br>COUNTY RECORDERS. | When a second-class county which has combined offices of circuit clerk and recorder is reclassified as a first-class county, the combined offices separate automatically by operation of law. |

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| 86-96 | Feb 8 | BENEFITS.<br>RETIREMENT.<br>SHERIFFS. | The surviving spouse of a county sheriff killed in the line of duty is entitled to the benefits of both §§ 57.967.5 and 57.980.2, RSMo 1994. |
| 88-96 | Feb 7 | COUNTY FUNDS.<br>COUNTY SALES TAX.<br>COUNTY TREASURER.<br>EMERGENCIES.<br>TELEPHONE. | The board created under § 190.335, RSMo 1994, to administer a county's central dispatch of emergency services has no authority to appoint or elect from its members a treasurer to disburse funds received from the special sales tax that § 190.335, RSMo 1994, authorizes the county to impose. |
| 89-96 | | | Withdrawn |
| 90-96 | Feb 2 | AMBULANCE DISTRICTS.<br>BIDDING.<br>COMPETITIVE BIDDING.<br>PURCHASES. | Section 50.660, RSMo Supp. 1995, does not impose competitive bidding requirements on ambulance districts; however, the fiduciary role of public officers requires that ambulance district directors follow purchasing procedures which reflect prudence, caution and attention in the management of the public assets under their control. |
| 95-96 | Feb 13 | NONRESIDENTS.<br>SCHOOLS.<br>TUITION. | Section 167.151.1, RSMo 1994, authorizes a school board, in its discretion, to admit nonresidents of Missouri, and to prescribe the tuition those nonresidents must pay to attend its schools. |
| 98-96 | July 5 | CITIES, TOWNS AND VILLAGES.<br>CITY PROPERTY.<br>CONSTITUTIONAL LAW.<br>CONVEYANCE OF PROPERTY - REAL ESTATE.<br>FOURTH CLASS CITIES.<br>MUSEUMS.<br>PUBLIC BUILDINGS. | The conveyance of property for nominal consideration from a fourth class city to a not-for-profit corporation for the purpose of establishing a historical museum would violate Article VI, Sections 23 and 25 of the Missouri Constitution. |
| 101-96 | Jan 31 | DONATIONS.<br>PORT AUTHORITY. | A not for profit corporation may be organized under Chapter 355, RSMo 1994, to solicit donations on behalf of a port authority established under Chapter 68, RSMo 1994, and the port authority may accept those donations. |
| 102-96 | Feb 15 | ADULT ABUSE.<br>COURT COSTS.<br>COUNTY FUNDS. | Section 455.027.1, RSMo 1994, prohibiting courts from charging adult abuse or stalking victims an advance filing fee or bond when they file petitions for protection, may cause counties to initially incur, under § 476.270, RSMo 1994, certain personal service expenses for those cases. However, § 476.270 imposes no duty on counties to advance court filing fees as those fees are not the court's expenditures. |

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| 106-1996 | Jan 12 | CITIES, TOWNS AND VILLAGES.<br>CITY RECORDS.<br>FOURTH CLASS CITY.<br>MAYOR.<br>RECORDS.<br>SUNSHINE LAW. | The mayor of a fourth class city has the authority under Section 610.120, RSMo 1994, to look at records pertaining to cases closed under Section 610.105, RSMo 1994, for the purpose of reviewing the job performance of the appointed city prosecutor. |
| 107-96 | Jan 29 | ARREST.<br>PEACE OFFICERS. | A member of a multijurisdictional enforcement group (MEG) may, under § 195.505.2, RSMo 1994, make an arrest anywhere in Missouri so long as the arrest is within the scope of the group's investigation and proper notice is given to the local authorities. The member may make such arrest notwithstanding that the member fails to meet peace officer certification standards in the jurisdiction of the arrest. |
| 113-96 | Jan 22 | COMPENSATION.<br>COUNTIES.<br>PROSECUTING ATTORNEY.<br>TERM OF OFFICE. | Pursuant to Section 105.050, RSMo 1994, the next election for Washington County Prosecuting Attorney will be in November 1998, and the Washington County Prosecuting Attorney is not entitled to the increase in compensation provided by Conference Committee Substitute for Senate Committee Substitute for House Bill 424, 88th General Assembly, First Regular Session (1995) during the current term of office. |
| 115-96 | Aug 23 | BOARDING PRISONERS.<br>CITY PRISONERS.<br>COUNTY JAIL.<br>FOURTH CLASS CITIES.<br>JAILS.<br>PRISONERS. | Pursuant to Section 221.070, RSMo 1994, a person committed to the county jail by lawful authority for a municipal ordinance violation, if convicted of the municipal ordinance violation, is liable to the municipality for the costs of incarceration. |
| 121-96 | Jan 17 | INITIATIVES. | Review and approval pursuant to Section 116.334, RSMo 1994, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the enactment of a new Section 578.050, RSMo, addressing exhibitions of fighting or wrestling involving animals or birds. |
| 122-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 123-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 124-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo |

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| | | | 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 125-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 126-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 127-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 128-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 129-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 130-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 131-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 132-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 133-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 134-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 135-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 136-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |

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| 137-96 | Jan 16 | INITIATIVES. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 139-96 | Jan 29 | DISSOLUTION OF SPECIAL ROAD DISTRICTS.<br>ROAD DISTRICTS. | A special road district organized under § 233.320 et seq., RSMo 1994, may not give away its revenues. Further, those districts may dissolve only in accordance with § 233.425. |
| 142-96 | Jan 29 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 143-96 | Jan 29 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. |
| 145-96 | June 5 | SCHOOLS.<br>TEACHERS.<br>TEACHERS' CERTIFICATES. | A parent educator employed in the parent education program authorized under Sections 178.691 to 178.699, RSMo 1994, is not subject to the minimum teacher's salary requirement of Section 163.172, RSMo 1994, even if the parent educator holds a valid teaching certificate. |
| 146-96 | Feb 16 | INITIATIVES. | Review and approval pursuant to Section 116.334, RSMo 1994, of the sufficiency as to form of a summary statement regarding an initiative petition relating to changes in Chapter 290, RSMo. |
| 147-96 | Feb 16 | INITIATIVES. | Review and approval pursuant to Section 116.334, RSMo 1994, of the sufficiency as to form of a summary statement regarding an initiative petition relating to changes in Chapter 290, RSMo. |
| 148-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (A1). |
| 149-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (A2). |
| 150-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (A3). |
| 151-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution |

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| | | | (A4). |
| 152-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (B1). |
| 153-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (B2). |
| 154-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (B3). |
| 155-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (B4). |
| 156-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (C1). |
| 157-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (C2). |
| 158-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (C3). |
| 159-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (C4). |
| 160-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (D1). |
| 161-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (D2). |
| 162-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution |

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| | | | (D3). |
| 163-96 | Feb 26 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (D4). |
| 167-96 | July 26 | CONFLICT OF INTEREST.<br>SCHOOLS.<br>SCHOOL CONTRACTS.<br>SCHOOL DISTRICT EMPLOYEES. | An employee of a six-director school district located in a second, third or fourth class county does not violate Section 171.181, RSMo 1994, in selling commodities to the school district if the sale of such commodities does not violate Sections 105.450 to 105.458, RSMo 1994. |
| 169-96 | Mar 1 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (E1). |
| 170-96 | Mar 1 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (E2). |
| 171-96 | Mar 1 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (E3). |
| 172-96 | Mar 1 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution (E4). |
| 174-96 | July 15 | CONCEALED WEAPONS.<br>FIREARMS.<br>PAWNBROKERS. | A person who pawns his concealable firearm is not required by Section 571.080, RSMo 1994, to obtain a permit to acquire a concealable firearm in order to redeem his concealable firearm from the pawnshop. |
| 175-96 | Mar 5 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article VIII of the Missouri Constitution by adopting new sections to be designated as Sections 8 through 14. |
| 176-96 | Mar 14 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Section 565.020(2), RSMo 1994, concerning the punishment for murder in the first degree. |
| 177-96 | Mar 13 | INITIATIVES. | Review and approval pursuant to Section 116.334, RSMo 1994, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Article I, Section 3 of the |

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| | | | Missouri Constitution. |
| 178-96 | Mar 13 | INITIATIVES. | Review and approval pursuant to Section 116.334, RSMo 1994, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. |
| 179-96 | Mar 20 | INITIATIVES. | Review and approval pursuant to Section 116.334, RSMo 1994, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Article VIII of the Missouri Constitution by adopting new sections to be designated as Sections 8 through 14. |
| 183-96 | Mar 29 | INITIATIVES. | Review and approval pursuant to Section 116.334, RSMo 1994, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Section 565.020(2), RSMo 1994, concerning the punishment for murder in the first degree. |
| 188-96 | May 7 | BONDS.<br>DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION.<br>HEALTH AND EDUCATIONAL FACILITIES AUTHORITY.<br>SCHOOL BONDS.<br>SCHOOLS. | (1) The effective date of Senate Bill No. 301, 88th General Assembly, First Regular Session (1995) is June 27, 1995, (2) grants authorized by Sections 360.111 to 360.118, RSMo Supp. 1995, are not available for new money bonds issued before June 27, 1995, (3) grants paid pursuant to Sections 360.111 to 360.118, RSMo Supp. 1995, should be paid after the end of the state fiscal year, (4) if there is inadequate funding to pay all grants authorized for new money bonds in a fiscal year, Sections 360.111 to 360.118, RSMo Supp. 1995, allow grants to be distributed proportionately among recipients of grants for new money bonds, (5) if there are adequate funds to pay all grants authorized for new money bonds in a fiscal year, the remaining funds should be used to pay grants authorized for refunding bonds, and (6) grants authorized in a prior year which were not paid, in whole or in part, because of inadequate funds are not to be paid from funds available in a subsequent year. |
| 190-96 | Apr 9 | CONCEALED WEAPONS. | Section 506.145, RSMo 1994, does not permit all persons over the age of 18 years to carry a concealed firearm. |
| 196-96 | Apr 29 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article VIII of the Missouri Constitution by adopting new sections to be designated as Sections 15 through 22. |
| 199-96 | May 17 | INITIATIVES. | Review and approval pursuant to Section 116.334, RSMo 1994, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Article VIII of the Missouri Constitution by adopting new sections to be designated as Sections 15 through 22. |

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| 200-96 | May 24 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the addition of one new statutory section concerning marriages. |
| 203-96 | June 6 | INITIATIVES. | Review and approval pursuant to Section 116.334, RSMo 1994, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the addition of one new statutory section concerning marriages. |
| 207-96 | June 24 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article VIII of the Missouri Constitution by adopting new sections to be designated as Sections 8 through 14. |
| 208-96 | June 24 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article VIII of the Missouri Constitution by adopting new sections to be designated as Sections 15 through 22. |
| 213-96 | July 1 | INITIATIVES. | Review and approval pursuant to Section 116.334, RSMo 1994, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Article VIII of the Missouri Constitution by adopting new sections to be designated as Sections 8 through 14. |
| 214-96 | July 1 | INITIATIVES. | Review and approval pursuant to Section 116.334, RSMo 1994, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Article VIII of the Missouri Constitution by adopting new sections to be designated as Sections 15 through 22. |
| 218-96 | July 24 | COSMETOLOGIST.<br>COSMETOLOGY, BOARD OF.<br>PROFESSIONAL REGISTRATION, DIVISION OF.<br>RULES AND REGULATIONS. | Chapter 329, RSMo, and 4 CSR 90-2.010(5)(D) require actual, documented school attendance in the minimum number of hours specified by statute before cosmetology students can be licensed. |

COUNTY CLASSIFICATION:
COUNTY OFFICERS:
COUNTY TREASURERS:
TERM OF OFFICE:

Under § 48.053, RSMo 1994, when a county changes from third-class to second-class on the same date as the county treasurer's term of office begins, that term is for two years, and subsequent terms are for four years.

January 26, 1996

OPINION NO. 40-96

The Honorable John T. Russell
Senator, District 33
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Russell:

This opinion responds to your question whether § 54.010.2[1] or § 54.010.3 applied to Camden County at its 1994 general election. You report that Camden County changed from a third-class county to a second-class county on January 1, 1991. We understand that it has not adopted a township form of government.

Various statutory provisions relate to your question. Section 54.010 provides:

> 1. There is created in all counties of this state the office of county treasurer.
>
> 2. In counties of classes one and two the qualified electors shall elect a county treasurer at the general election in 1956 and every four years thereafter.
>
> 3. In counties of classes three and four the qualified electors shall elect a county treasurer at the general election in the year 1954, and every four years thereafter, except that in those counties having adopted the township alternative form of county

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[1]All statutory references are, unless otherwise noted, to the 1994 Revised Statutes of Missouri (RSMo). We cite to the 1994 revision for ease of reference as no cited statute has changed since January 1, 1991.

> government the qualified electors shall elect a county treasurer at the November election in 1956, and every four years thereafter.

Section 54.030 provides that county treasurers shall, except as § 48.053 provides otherwise, serve four-year terms beginning the first of January following their election. Section 48.053 states:

> The incumbent of the office of county treasurer of a county changing from third class to second class or from second class to third class shall continue to hold office for the term to which he was elected. His successor in office shall be elected at the general election next preceding the expiration of the incumbent's term of office to a term of two years and until his successor is elected, as provided in section 54.010, RSMo, and qualified.

Section 115.121.1 provides that general elections take place in November of even-numbered years.

Because Camden County was not a third-class county during the November 1994 general election, § 54.010.3 did not apply. It was a second-class county; therefore, § 54.010.2 would ordinarily apply. However, § 48.053 conflicts with § 54.010.2 in that § 48.053 provides for an intervening two-year term when a county changes from a third to second-class county, as did Camden County. In resolving any conflict, we are mindful of the "well-established rule of statutory construction that where one statute deals with a particular subject in a general way, and a second statute treats a part of the same subject in a more detailed way, the more general should give way to the more specific." O'Flaherty v. State Tax Comm'n of Missouri, 680 S.W.2d 153, 154 (Mo. banc 1984). Because § 48.053 deals with the subject in a more detailed way, it controls over § 54.010.2. Since your opinion request relates to the county treasurer's term of office, we next examine § 48.053 in the context of that issue.

Camden County voters elected a county treasurer in November 1990; she served a four-year term from January 1, 1991 through December 31, 1994. On the date that term started, January 1, 1991, Camden County became a second-class county. To determine the treasurer's term under § 48.053, we must first determine whether the term "incumbent" refers to the office holder immediately before the reclassification, or the office holder immediately thereafter. Section 48.053 refers to the incumbent of "a county **changing** from third class to second class" (our emphasis). We conclude that the use of the present tense of the verb "change" shows that our legislature intended "incumbent" to refer to the treasurer in office immediately prior to the county's reclassification. Otherwise, the legislature would have used the past tense of that verb. Consequently, the Camden County treasurer elected in 1990 should have had a two-year term

ending December 31, 1992. Section 48.053. Thereafter, Camden County's treasurers' terms should have been for four years. Section 54.010.2. Attorney General Opinion No. 77, Mathewson and Birch, 1979, a copy of which is enclosed, addressed this issue and is in accord.

The Camden County treasurer who took office on January 1, 1991, should have served a two rather than four-year term. Her successor, the current office holder, took office on January 1, 1995, instead of January 1, 1993. We do not challenge the right of Camden County's current treasurer to that office. However, Camden County is now a second-class county; therefore, its current treasurer's term expires December 31, 1996. Section 54.010.2. Thereafter, each successor's term shall be for four years.

## CONCLUSION

It is the opinion of this office that under § 48.053, RSMo 1994, when a county changes from third-class to second-class on the same date as the county treasurer's term of office begins, that term is for two years, and subsequent terms are for four years.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

HOUSING AUTHORITY:
INSURANCE:
POLITICAL SUBDIVISIONS:

An association of Missouri housing authorities formed under § 537.620, RSMo 1994, to self-insure their risks may not contract to assume risks of other than Missouri political subdivisions which are members.

February 14, 1996

OPINION NO. 53-96

The Honorable Carl M. Vogel
State Representative, District 114
State Capitol Building
Jefferson City, MO 65101

Dear Representative Vogel:

This opinion responds to your question asking:

> Whether Missouri Housing Authorities under the auspices of Missouri Housing Authorities Property & Casualty Insurance, Inc. (hereinafter "MHAPCII") can enter into contracts with housing authorities in other states, if permitted by the laws of said states, to provide property and casualty insurance and reinsurance in essentially the same manner as it currently provides coverage to its Missouri members?

Various statutory provisions relate to your question. Statutes relating to the same subject are to be considered together and harmonized if possible so as to give meaning to all the provisions of each. State *ex rel.* Lebeau v. Kelly, 697 S.W.2d 312, 315 (Mo.App., E.D. 1985).

Section 537.620[1] authorizes:

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[1]All statutory references are, unless otherwise indicated, to the 1994 Revised Statutes of Missouri (RSMo).

> [A]ny three or more political subdivisions of this state [to] form a business entity for the purpose of providing liability and all other insurance for any of the subdivisions upon the assessment plan as provided in sections 537.600 to 537.650. Any political subdivision may join this entity and use public funds to pay any necessary assessments.

(Our emphasis).

Section 537.625 sets forth the requirements which the § 537.620 association must meet. That section requires the association to file articles of association and bylaws. The articles of association must set forth the method by which members may be admitted to the association, the method of assessing members, and assessment maximums. The bylaws must provide for a governing body for the association, must specify the classes of membership, and must give other information. Section 537.625.2 requires the association to appoint a registered agent. Section 537.625.3 authorizes the association to provide in its bylaws that it may transfer risk to other insurance companies or for reinsurance. Section 537.635 provides that the association is to do business as a corporation, that each member's liability is limited to the amount of assessments, and that the corporation is to distribute no profits.

Section 99.040 authorizes the formation of municipal corporations known as housing authorities to provide safe and sanitary low-income housing. Housing authorities are political subdivisions of the state. State *ex rel.* City of St. Louis v. Ryan, 776 S.W.2d 13, 16 (Mo. banc 1989) (citing § 99.040, RSMo 1986).

Article VI, § 16, of the Missouri Constitution provides:

> Any municipality or political subdivision of this state may contract and cooperate with . . . other states or their municipalities or political subdivisions . . . for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law.

Section 70.220 sets forth the statutory equivalent.

Because a housing authority is a political subdivision, it may contract and cooperate with other states or their municipalities or political subdivisions for "a common service." However, your question asks whether the association MHAPCII,

formed under § 537.620, may contract with political subdivisions outside the state "to provide property and casualty insurance and reinsurance in essentially the same manner as it currently provides coverage to its Missouri members."

Section 537.620 authorizes housing authorities to form or to join the association. It sets forth the association's purpose as "providing liability and all other insurance for any of the subdivisions." (Our emphasis). Section 537.625.3 expressly authorizes that association to provide in its bylaws "for the transfer of risks to other insurance companies or for reinsurance." We can find no provision authorizing the association, however, to insure other than the risks of its member subdivisions. Section 537.620 limits its initial membership to "political subdivisions of this state" but allows "[a]ny political subdivision" to join and use public funds to pay any necessary assessments. We conclude that "any political subdivision" is a reference to political subdivisions of Missouri. Otherwise, the legislature would not have needed to authorize those political subdivisions to "use public funds." Thus, only political subdivisions of Missouri may become members of the association. Accordingly, the association may not insure risks of other states' housing authorities.

## CONCLUSION

It is the opinion of this office that an association of Missouri housing authorities formed under § 537.620 to self-insure their risks may not contract to assume risks of other than Missouri political subdivisions which are members.

Very truly yours

JEREMIAH W. (JAY) NIXON
Attorney General

AMBULANCE DISTRICTS:
CONFLICT OF INTEREST:
FIRE PROTECTION DISTRICTS:

Section 321.017, RSMo 1994, prohibits an employee of any fire protection district formed under chapter 321, RSMo 1994, or any ambulance district formed under chapter 190, RSMo 1994, from serving on the board of any fire protection or ambulance district which has full time paid employees.

February 1, 1996

OPINION NO. 55-96

The Honorable William P. McKenna
Senator, District 22
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator McKenna:

This opinion responds to your question asking:

> May a paid employee of either a tax supported ambulance district or a tax supported fire district serve as a board member of another tax supported fire or ambulance district which has full time paid employees?

Section 321.017[1] addresses this issue. It provides:

> [N]o employee of any fire protection district or ambulance district shall serve as a member of any fire district or ambulance district board while such person is employed by any fire district or ambulance district, except that an employee of a fire protection district or an

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[1] All statutory references are, unless otherwise indicated, to the 1994 Revised Statutes of Missouri (RSMo).

> ambulance district may serve as a member of a voluntary fire protection district board or a voluntary ambulance district board.

(our emphasis). Unless the employee seeks to serve as a member of "a voluntary fire protection [or ambulance] district board," § 321.017 prohibits such service. No statute defines that ambiguous phrase and no appellate court has construed it.

The purpose of statutory construction is to ascertain the legislature's intent and to give effect to that intent if possible. We consider statutory terms in their plain and ordinary sense. Trainliner Corp. v. Director of Revenue, 783 S.W.2d 917 (Mo. banc 1990). We find that meaning in the dictionary. Delta Airlines, Inc. v. Director of Revenue, no. 77667 (Mo. banc Oct. 24, 1995) slip op. at 4. "Voluntary" means "acting or done of one's own free will without valuable consideration or legal obligation." Webster's Ninth New Collegiate Dictionary 1322 (9th ed. 1987). The term "voluntary" modifies either "district" or "board."

In State ex inf. Gavin v. Gill, 688 S.W.2d 370, 372 (Mo. banc 1985), the Missouri Supreme Court construed § 321.015, which prohibits certain officeholders or employees from serving as fire protection district directors. The court found that:

> [p]ublic bodies have an important interest in securing the absolute loyalty of their employees. Different governmental units frequently interrelate. . . . The legislature well might conclude that an employee of one governmental unit should not be eligible to serve as a member of the governing board of another[.]

We conclude that § 321.017 has a similar purpose: to prevent conflicts of interest and secure loyalty. The districts' boards set the salaries and benefits, if any, of their employees. Sections 321.220(9), (15); 321.600(9), (15) and 190.060(6), (8). Thus, the possibility of a conflict in that regard would appear less likely for districts using workers who receive no valuable consideration. Those concerns are not as prominent for board member compensation because statutes already strictly limit that. Sections 190.055 and 321.190. Therefore, the term "voluntary" modifies the noun "district." We conclude that an employee of any fire protection or ambulance district may not serve on the board of any fire protection or ambulance district unless it is a "voluntary" district; that is, one which does not compensate its workers.

## CONCLUSION

It is the opinion of this office that § 321.017, RSMo 1994, prohibits an employee of any fire protection district formed under chapter 321, RSMo 1994, or any ambulance district formed under chapter 190, RSMo 1994, from serving on the board of any fire protection or ambulance district which has full time paid employees.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ASSESSORS:
COUNTIES:
COUNTY COMMISSIONERS:
PENALTIES:
PERSONAL PROPERTY ASSESSMENT:
PERSONAL PROPERTY TAX:

A county commissioner of a third-class county has no authority to waive penalties for a taxpayer's failure to timely file a personal property list with the assessor as required by Section 137.280, RSMo 1994.

January 24, 1996

OPINION NO. 78-96

The Honorable Marilyn Williams
Representative, District 159
State Capitol Building
Jefferson City, MO 65101

Dear Representative Williams:

This opinion is in response to your questions asking:

> (1) Does a county commissioner have the authority to waive penalties that a county assessor has assessed for a taxpayer's failure to timely file a personal property list?
>
> (2) If so, can a county commissioner waive such penalties if that commissioner holds a good faith belief that the taxpayer filled out the assessment form and mailed it in proper time to avoid penalty or that the assessment form was received in the county assessor's office in the proper time but perhaps misplaced in the office?

We assume your questions concern the authority of county commissioners and the assessor of a third-class county.

Section 137.280, RSMo 1994, sets forth taxpayers' duties to file personal property tax lists and assessors' duties to assess penalties for failure to timely file the lists. It provides:

> 1. Taxpayers' personal property lists . . . shall be delivered to the office of the assessor of the county between the first day of January and the first day of March each year. . . . If any person shall fail to deliver the required list to the assessor by the first day of March, the owner of the property which ought

> to have been listed shall be assessed a penalty added to the tax bill, based on the assessed value of the property that was not reported[.]
>
> * * *
>
> The assessor [in other than certain counties not relevant to your inquiry] shall omit assessing the penalty in any case where he is satisfied the neglect falls into at least one of the following categories:
>
> (1) The taxpayer is in military service and is outside the state;
>
> (2) The taxpayer filed timely, but in the wrong county;
>
> (3) There was a loss of records due to fire or flood;
>
> (4) The taxpayer can show the list was mailed timely as evidenced by the date of postmark; or
>
> (5) The assessor determines that no form for listing personal property was mailed to the taxpayer for that tax year; or
>
> (6) The neglect occurred as a direct result of the actions or inactions of the county or its employees or contractors.
>
> 2. Between March first and April first, the assessor shall send to each taxpayer who was sent an assessment list for the current tax year, and said list was not returned to the assessor, a second notice that statutes require the assessment list to be returned immediately. In the event the taxpayer returns the assessment list to the assessor before May first, the penalty described in subsection 1 of this section shall not apply. If said assessment list is not returned before May first by the taxpayer, the penalty shall apply.
>
> * * *

Section 137.280 requires county assessors, under certain circumstances, to waive late-filing penalties. We can find no law authorizing a county commissioner to waive a late-filing penalty. In construing statutes, we recognize that "where special powers are expressly conferred or special methods are expressly prescribed for the exercise of power, other powers and procedures are excluded." Yellow Freight Systems Inc. v. Mayor's Commission on Human Rights of the City of Springfield, 791 S.W.2d 382, 387 (Mo. banc 1990) (quoting Brown v. Morris, 290 S.W.2d 160, 166 (Mo. banc 1956)). We, therefore, conclude that county commissioners have no authority to waive late-filing penalties.

Having concluded that county commissioners have no authority to waive late-filing penalties, it is not necessary to address your second question.

## CONCLUSION

It is the opinion of this office that a county commissioner of a third-class county has no authority to waive penalties for a taxpayer's failure to timely file a personal property list with the assessor as required by Section 137.280, RSMo 1994.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

CITIES, TOWNS and VILLAGES:
FOURTH CLASS CITIES:

No provision of the Clean Indoor Air Act, sections 191.765 through 191.777, RSMo 1994, prohibits a fourth-class city from enacting a more stringent ordinance that regulates smoking. However, any such ordinance must not attempt to permit what that Act prohibits or prohibit what that Act permits.

January 12, 1996

OPINION NO. 80-96

The Honorable John Schneider
State Senator, District 14
State Capitol Building, Room 422
Jefferson City, MO 65101

Dear Senator Schneider:

This opinion is in response to your question asking:

> Does the Clean Indoor Air Act (Sections 191.765, et seq.) preempt more stringent regulation of smoking by fourth class cities?

As you have noted, the Clean Indoor Air Act, §§ 191.765 through 191.777, RSMo 1994, regulates smoking in public places. Only one section of the Act directly addresses the issue of preemption. That section, § 191.777, RSMo 1994, provides:

> Nothing in sections 191.775 and 191.776 shall prohibit local political subdivisions or local boards of education from enacting more stringent ordinances or rules.

The primary rule of statutory construction is to ascertain the intent of the legislature by considering the plain and ordinary meaning of the words used in the statute. Conagra Poultry Co. v. Director of Revenue, 862 S.W.2d 915, 917 (Mo. banc 1993) (citing Jones v. Director of Revenue, 832 S.W.2d 516, 517 (Mo. banc 1992)). Here, it is clear from the language of § 191.777 that §§ 191.775 and 191.777 do not prohibit a fourth-class city from enacting ordinances that are more stringent than state laws. However, to answer your question completely, we must also determine whether any of the remaining sections of the Act prohibit fourth-class cities from enacting more stringent smoking ordinances.

Because you included no specific ordinance in your opinion request, we are not in a position to opine as to whether a particular ordinance conflicts with provisions of the Act. In addition, it is the standard policy of this office not to opine on the validity of a local ordinance. However, we will provide some guidelines to resolve the question of whether an ordinance will conflict with state laws.

Generally, a municipal ordinance must be in harmony with the general laws of the state and is void if in conflict. Morrow v. City of Kansas City, 788 S.W.2d 278, 281 (Mo. banc 1990). To be in harmony with state law, the powers granted a municipality must be exercised in a manner not contrary to the public policy of the state, and any provisions in conflict with prior or subsequent state statutes must yield. Id. To determine whether an ordinance conflicts with general laws, it is necessary first to determine whether the ordinance permits that which the statute prohibits and vice-versa. Id.

Some courts have held that ordinances enacted to suppress disorderly conduct, provide for safety, preserve health, promote prosperity, and improve morals, order, comfort and convenience of a municipality are consistent with the general laws of the state and constitution. Kansas City v. LaRose, 524 S.W.2d 112, 117 (Mo. banc 1975). More stringent smoking ordinances would appear to fall within this class.

Other courts separate ordinances into two categories — regulatory and prohibitory. These courts have held that regulatory ordinances which require more than the statutes require but otherwise leave the exercise of the statutes reasonably intact, are valid, whereas prohibitory ordinances which operate to nullify the statutes altogether, are invalid. Crackerneck Country Club, Inc. v. City of Independence, 522 S.W.2d 50, 53 (Mo. App., K.C.D. 1974) (citing Nickols v. North Kansas City, 358 Mo. 402, 214 S.W.2d 710, 712 (Mo. 1948)). However, where both an ordinance and a statute are prohibitory but the ordinance goes further, but not contrary to, the prohibition of the statute, and does not attempt to authorize what the legislature has forbidden or forbid what the legislature has expressly authorized, then the ordinance is valid and effective. LaRose, 524 S.W.2d at 117.

The Act regulates smoking in public places. The legislature obviously considered the possibility of a local government body more strictly regulating smoking when it enacted § 191.767.2, which provides:

> A smoking area may be designated by persons having custody or control of public places, except in places in which smoking is prohibited by the fire marshal or by other law, ordinance or regulation. (Our emphasis).

It is a well-established rule in Missouri that an ordinance may supplement state law and enlarge upon the provisions of a statute by requiring more than the statute requires, unless the statute limits the requirements for all cases to its own prescriptions. Page Western, Inc. v. Community Fire Protection District of St. Louis County, 636 S.W.2d 65, 67-68 (Mo.

banc 1982) (citing Vest v. City of Kansas City, 355 Mo. 1, 194 S.W.2d 38, 39 (1946); and State ex rel. Hewlett v. Womach, 355 Mo. 486, 196 S.W.2d 809, 812 (banc 1946)). Here, the Act does not limit regulation for all cases to its own prescriptions but rather leaves some flexibility for local governing bodies to shape their own smoking regulations.

## CONCLUSION

It is the opinion of this office that no provision of the Clean Indoor Air Act, sections 191.765 through 191.777, RSMo 1994, prohibits a fourth-class city from enacting a more stringent ordinance that regulates smoking. However, any such ordinance must not attempt to permit what that Act prohibits or prohibit what that Act permits.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

CIRCUIT CLERKS:
COUNTY CLASSIFICATION:
COUNTY OFFICERS:
COUNTY RECORDERS:

When a second-class county which has combined offices of circuit clerk and recorder is reclassified as a first-class county, the combined offices separate automatically by operation of law.

January 25, 1996

OPINION NO. 85-96

The Honorable Chuck Pryor
Representative, District 116
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Pryor:

This opinion is in response to your questions regarding the effects of reclassification of a county on the combined offices of circuit clerk and *ex officio* recorder. You asked:

> 1. When a county of the second class, whose circuit clerk and recorder of deeds is one official, becomes a county of the first class, should the county separate those two offices?
>
> 2. If so, should it be done by the action of the county commission or by a vote of the people?

In your opinion request, you noted that the county of interest is Camden County. Camden County was a third-class county until some time after 1987, when it became a second-class county. It currently remains a second-class county but effective January 1, 1997, will become a first-class county.

Section 59.090[1] requires fourth-class counties to have their circuit clerks serve as *ex officio* recorders. Third-class counties have the option of combining or separating the offices, that decision to be made by the voters of the county. Section

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[1]All statutory references, unless otherwise noted, are to the 1994 Revised Statutes of Missouri (RSMo).

59.040. We can find no provision generally allowing first or second-class counties to combine the offices. In fact, § 59.020 provides that first and second-class counties shall elect their recorders; § 483.015 provides with some exceptions that all circuit clerks are to be elected. However, § 59.041 provides:

> Notwithstanding the provisions of this chapter or chapter 478, RSMo, or any other provision of law in conflict with the provisions of this section, in any county which becomes a county of the second class after September 28, 1987, and wherein the offices of circuit clerk and recorder of deeds are combined, such combination shall continue until the voters of the county authorize the separation of offices as provided in section 59.040.1. [Emphasis added.]

This provision currently applies to Camden County, and explains why the circuit clerk is also the *ex officio* recorder.

"Where language of a statute is clear, courts must give effect to the language as written." Kearney Special Road District v. County of Clay, 863 S.W.2d 841, 842 (Mo. banc 1993). "Where no ambiguity exists, there is no room for construction." Lough by Lough v. Rolla Women's Clinic, Inc., 866 S.W.2d 851, 855 (Mo. banc 1993). If there is ambiguity, and resort to construction is needed, the primary rule in construing a statute is to ascertain the legislature's intent from the language used and, if possible, to give effect to that intent. Maudlin v. Lang, 867 S.W.2d 514, 516 (Mo. banc 1993) (citing Magee v. Blue Ridge Professional Building Co., 821 S.W.2d 839, 843 (Mo. banc 1991)). In determining that intent, we look to the words used, their context, and the problem the legislature sought to correct via the enactment. Wilson v. Director of Revenue, 873 S.W.2d 328, 329 (Mo. App., E.D. 1994).

We must also be mindful of the well-settled principle of law that a county can exercise only those powers granted to it in express words, those necessarily or fairly implied in or incident to the powers expressly granted, and those essential — not simply convenient, but indispensable — to the declared objects and purposes of the county. Lancaster v. County of Atchison, 180 S.W.2d 706, 708 (Mo. banc 1944); American Aberdeen Angus v. Stanton, 762 S.W.2d 501, 503 (Mo. App., W.D. 1988)(citing Lancaster). Any fair, reasonable doubt concerning the existence of power must be resolved against the county, and the power should be denied. Id. We must presume that the legislature was aware of this rule of law when it enacted Section 59.041.

Nicolai v. City of St. Louis, 762 S.W.2d 423, 426 (Mo. banc 1988).

We believe the legislature evidenced its intent in Chapter 59 that smaller counties combine the offices of recorder and circuit clerk and that larger counties elect separate officers for those offices. Consistent with that intent, we read the above-emphasized part of § 59.041 to apply only to second-class counties which become so after September 28, 1987. We do not read the statute to authorize continued jointly held offices in what are now first-class counties, even if those counties had become second-class counties after September 28, 1987. Consequently, Camden County must have separate office holders for those county offices when it becomes a first-class county.

While action to separate the two offices is necessary in a third-class county under § 59.040 (county voter option to combine or separate offices), and action is required under § 59.041 (county voter approval required to separate offices in certain second-class counties), it is our opinion that no county action is needed to separate the offices when and if Camden County becomes a first-class county. The separation will occur automatically as a matter of law.

This conclusion is consistent with prior Attorney General opinions regarding the effects of reclassification on county powers and restrictions. In Opinion No. 72, Pratt, February 16, 1955, this office opined on the issue. There, any sheriff of a third-class county also served as the county's assistant probation officer. There was no such provision for second-class counties. The question was what happened to the sheriff's duties as assistant probation officer when the county was reclassified from third-class to second-class. This office opined that when the reclassification took place, the sheriff would no longer be required to act as assistant probation officer or to receive compensation for those duties. This was so even though the sheriff's term would not expire until after the reclassification. Thus, the sheriff automatically ceased serving as the assistant probation officer as of the date of reclassification.

In Opinion No. 17, Whitcraft, 1972, this office addressed another reclassification issue. There the question was whether the "township" organization form of government, which was authorized for only third and fourth-class counties, automatically ceased to exist when a third-class county became a second-class county. This office opined that the township organization would automatically cease upon reclassification and that no action was required of the county.

Based on our opinion that the separation of offices will occur automatically, it is unnecessary to address your second question, asking whether separation of the two offices should be done by the county commission or by a vote of the people.

Upon reclassification effective January 1, 1997, Camden County will have a separate office of recorder. Section 48.050 governs the effect of county reclassification on county officials and provides:

> . . . Any office which may be established as a result of the change of the county from one class to another shall be filled in accordance with the provisions of the law relating to the filling of vacancies for such office.

Section 105.030 provides that the governor must fill any vacancy of any county office "originally filled by election of the people." Article IV, § 4, Mo. Const. (1945), provides that the Governor must fill any vacancy in public office unless "otherwise provided by law." Therefore, whether the county's reclassification creates a new office or creates a vacancy in an existing office, the Governor must fill the office by appointment.

CONCLUSION

It is the opinion of this office that when a second-class county which has combined offices of circuit clerk and recorder is reclassified as a first-class county, the combined offices separate automatically by operation of law.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosures

BENEFITS:
RETIREMENT:
SHERIFFS:

The surviving spouse of a county sheriff killed in the line of duty is entitled to the benefits of both §§ 57.967.5 and 57.980.2, RSMo 1994.

February 8, 1996

OPINION NO. 86-96

The Honorable Bob Ward
Representative, District 107
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Ward:

This opinion responds to your question asking:

> Would benefits paid to a surviving spouse under Section 57.967.5 for a sheriff who was killed in the performance of his duty prohibit the surviving spouse from also receiving the limited five year benefit provided under Section 57.980.2?

You indicated that your opinion request relates to the surviving spouse of a sheriff killed in the line of duty on September 23, 1994 after 9.75 years of creditable service in the Missouri Sheriffs' Retirement System. You did not indicate how long the sheriff had been married at the time of his death; we assume that he had been married for more than two years.

Section 57.961[1] makes elected or appointed county sheriffs members of the sheriffs' retirement system while so employed or while receiving or eligible to receive the system's benefits. Section 57.964 authorizes a "normal annuity" retirement benefit for any such member who has attained fifty-five years of age and has twelve or more

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[1]All statutory references are, unless otherwise noted, to the 1994 Revised Statutes of Missouri (RSMo).

years of creditable service or who has attained sixty-two years of age and has eight or more years of creditable service. Benefit payments are made from the "Sheriffs' Retirement Fund" which § 57.952 created. A normal annuity is two percent of the average of the highest three years' pay as a sheriff multiplied by the number of years of creditable service. Sections 57.967.1 and 57.949(2).

Special provisions of law apply for benefits of a sheriff who dies while a member of the system. Section 57.967.5 provides:

> If a member with eight or more years of service dies before becoming eligible for retirement, his surviving spouse, if she has been married to the member for at least two years prior to his death, shall be entitled to survivor benefits under option 1 as set forth in section 57.979, as if the member had retired on the date of his death. His monthly benefit would be calculated as the member's accrued benefit at his death reduced actuarially for an early commencement from the member's normal retirement date . . . . Such benefit shall be payable . . . during the surviving spouse's lifetime.

(Our emphasis).

Section 57.979.2 sets forth "option 1" as follows:

> Option 1. The actuarial equivalent of the member's normal annuity in reduced monthly payments for life during retirement with the provision that upon the member's death, fifty percent of the reduced normal annuity shall be continued throughout the life of and paid to the member's spouse.

Section 57.980 sets forth a member's death benefits as follows:

> 1. A death benefit of ten thousand dollars shall be paid to the designated beneficiary of every active member upon his death or to his estate if there is no designated beneficiary, or in lieu thereof, a benefit of twenty thousand dollars shall be so paid if the member is killed in the performance of his duty.

> 2. If a member dies during the performance of his duty, in addition to the death benefit specified in subsection 1 of this section, his surviving spouse shall be entitled to survivorship benefits of fifty percent of the accrued benefit, payable for a period of five years.
>
> 3. If a member dies other than during the performance of his duty and before retirement, after becoming eligible for retirement, his surviving spouse . . . shall be entitled to survivorship benefits under option one as set forth in section 57.979 as if the member had retired on the date of his death.

(Our emphasis).

In construing statutes, we are mindful that "each part of a given statute must be read *in pari materia* with the other related parts." Barry Service Agency Co. v. Manning, 891 S.W.2d 882, 890. (Mo. App., W.D. 1995). We should give statutes a construction that will best effect their purposes. Household Fin. Corp. v. Robertson, 364 S.W.2d 595 (Mo. 1963).

The legislature has provided various benefits when a sheriff dies while a member of the sheriffs' retirement system. Those benefits depend on a number of different variables. Section 57.967.5 provides a sheriff's surviving spouse an actuarially reduced retirement benefit for that surviving spouse's lifetime, but only if the sheriff has eight or more years of service and was not eligible for retirement on the date of death. That payment is based upon the sheriff's "accrued benefit." If the sheriff was eligible to retire but had not retired and dies other than in the line of duty, § 57.980.3 provides the surviving spouse the same benefit, without actuarial reduction. Section 57.980.1 provides, without regard to the sheriff's entitlement to any retirement benefit, a death benefit of $10,000 or $20,000 depending on whether the member is killed in the line of duty.[2] Section 57.980.2 provides a death benefit to the sheriff's surviving spouse, payable over five years, and again without regard to the sheriff's

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[2]There is apparently no question, in the situation about which you are concerned, that the sheriff's beneficiary or estate is entitled to the benefit under § 57.980.1.

entitlement to retirement benefits, when the sheriff dies in the line of duty. That payment is one half of the sheriff's "accrued benefit."[3]

The clear purpose of the above statutes is to provide surviving spouses and other beneficiaries with some measure of security upon the death of a county sheriff. No provision of law restricts the receipt of any of these benefits if a beneficiary receives another of the benefits. The two benefit provisions at issue are different. Section 57.967.5 provides a benefit for the surviving spouse's life without regard to whether the sheriff died in the line of duty but only if the sheriff had served eight or more years. Section 57.980.2 provides a benefit to the surviving spouse for five years without regard to the sheriff's term of service but the sheriff must have died in the line of duty. Accordingly, we conclude that the benefit § 57.980.2 accords a sheriff's surviving spouse, payable over five years, is different than, and in addition to, the benefit § 57.967.5 accords a sheriff's surviving spouse for that spouse's lifetime.

## CONCLUSION

It is the opinion of this office that the surviving spouse of a county sheriff killed in the line of duty is entitled to the benefits of both §§ 57.967.5 and 57.980.2.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

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[3] Both §§ 57.980.2 and 57.967.5 use the term "accrued benefit." No provision of law or court decision defines that term. We presume that the fund's administrators give that term the same construction under both provisions.

COUNTY FUNDS:
COUNTY SALES TAX:
COUNTY TREASURER:
EMERGENCIES:
TELEPHONE:

The board created under § 190.335, RSMo 1994, to administer a county's central dispatch of emergency services has no authority to appoint or elect from its members a treasurer to disburse funds received from the special sales tax that § 190.335, RSMo 1994, authorizes the county to impose.

February 7, 1996

OPINION NO. 88-96

The Honorable Gary Wiggins
State Representative, District 8
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Wiggins:

This opinion responds to your question asking:

> Can the board of the Macon County central dispatch of emergency services appoint from its members a treasurer to administer its funds?

You report that the Macon County 911 Board is operating under a three eighths percent sales tax adopted in November 1994 and earmarked for the board's use. That board desires to elect a treasurer to disburse that sales tax revenue on its behalf. Macon County is a third-class county.

Sections 190.300[1] through 190.337 authorize the formation and funding of boards to administer the central dispatching of emergency services. Section 190.335 authorizes any county to impose a sales tax of up to one percent to provide central dispatching of emergency services and authorizes a board "to administer the funds and oversee the provision of emergency services in the county." That sales tax is in lieu of another tax: the emergency telephone service tax that § 190.305 authorizes. Section 190.335.1. Section 190.335.5 states that the provisions of §§ 32.085 and 32.087 apply to the sales tax authorized by § 190.335. Sections 32.085 and 32.087 impose upon the Missouri Director of Revenue the duty to collect, account for, and distribute that sales tax and to secure a bond in connection with those duties.

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[1]All statutory references are, unless otherwise indicated, to the 1994 Revised Statutes of Missouri (RSMo).

Political subdivisions' powers are limited to those expressed or implied by statute, and any doubt should be construed against the grant of power." State ex rel. St. Louis Housing Authority v. Gaertner, 695 S.W.2d 460, 462 (Mo. banc 1985). Section 190.335 is silent on whether the central dispatch board may appoint or elect a treasurer to distribute the special sales tax revenues. County treasurers typically disburse all county funds. Section 54.140. Section 54.070 requires each county treasurer to post a bond to secure the "faithful performance of the duties of his office." We conclude that the legislature did not intend to confer upon the central dispatch board in question the power to appoint or elect a treasurer to distribute its revenues. In so concluding, we rely on the legislature's express grant of such power to a similar board and its failure to do so for the board in question.

Section 190.309, RSMo Supp. 1995, creates an Emergency Telephone Service 911 Board for a certain third-class county; Macon County is not that county.[2] Subsection 8 of § 190.309 provides that the board shall have exclusive control "of all tax revenues collected by the county on behalf of the emergency telephone 911 services."[3] Under § 190.309, that board may, among other things, receive the emergency telephone service tax and authorize disbursements of it. Subsection 5 of § 190.309 authorizes that board to elect, among others, a treasurer, who shall first furnish a surety bond for "the faithful performance of his duties and faithful accounting of all moneys that may come into his hands."

The legislature expressly provided for the election of a treasurer in the instance of the 911 board that § 190.309, RSMo Supp. 1995, creates. However, the legislature made no such provision for central dispatch boards under § 190.335. Had the legislature intended to authorize § 190.335's central dispatch boards to appoint or elect treasurers to distribute the board's special sales tax revenues, we believe that it would have expressly provided for a treasurer, like it did in § 190.309, RSMo Supp. 1995. We further conclude that it would have required any such treasurer to secure a bond, like it requires the Director, the county treasurers, and the § 190.309 board's treasurer to do. Accordingly, the Macon County 911 Board has no authority to appoint or elect a treasurer to disburse the board's special central dispatch sales tax funds.

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[2]That law applies only to a third-class county having a population between 25,000 and 29,000 people, containing a national landmark, and adjoining exactly four other third-class counties, all of which have populations between 6,000 and 11,000 people. Section 190.309.1, RSMo Supp. 1995. Although Macon county is a third-class county, it does not meet the other criteria.

[3]Section 190.305 authorizes the legislative body of a city or county to levy an emergency telephone service tax on telephone service charges to pay for the operation of an emergency telephone service (911 service).

This opinion is in accord with Attorney General Opinion No. 99-83, a copy of which we enclose.

## CONCLUSION

It is the opinion of this office that the board created under § 190.335 to administer a county's central dispatch of emergency services has no authority to appoint or elect from its members a treasurer to disburse funds received from the special sales tax that § 190.335 authorizes the county to impose.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

AMBULANCE DISTRICTS:
BIDDING:
COMPETITIVE BIDS:
PURCHASES:

Section 50.660, RSMo Supp. 1995, does not impose competitive bidding requirements on ambulance districts; however, the fiduciary role of public officers requires that ambulance district directors follow purchasing procedures which reflect prudence, caution and attention in the management of the public assets under their control.

February 2, 1996

OPINION NO. 90-96

The Honorable Jim Sears
Representative, District 1
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Sears:

This opinion responds to your question asking whether § 50.660, RSMo Supp. 1995, applies to ambulance districts.

Section 50.660 sets forth competitive bidding procedures applicable to counties. It provides in pertinent part that:

> All contracts shall be executed in the name of the county by . . . . No contract or order imposing any financial obligation on the county is binding on the county unless . . . . All contracts and purchases shall be let to the lowest and best bidder after due opportunity for competition, including advertising the proposed letting in a newspaper in the county with a circulation of at least five hundred copies per issue, if there is one, except that the advertising is not required in case of contracts or purchases involving an expenditure of less than three thousand dollars. It is not necessary to obtain bids on any purchase in the amount of one thousand dollars or less made from any one person, firm or corporation during any period of ninety days. . . . Contracts which provide that the person contracting with the county shall . . . . In case of such contract, no financial

> obligation accrues against the county until . . . . [Emphasis added.]

The restrictions imposed under § 50.660 apply to contracts and purchases made by counties. An ambulance district, organized under chapter 190, RSMo, is itself a political subdivision of the state, § 190.010.2, RSMo 1994, distinct from county government and subject to the authority and limitations contained in chapter 190, RSMo. It is vested with independent authority to purchase both real and personal property. Section 190.060.1(2), RSMo 1994. The "Ambulance District Law," §§ 190.005-190.085, RSMo, however, neither adopts the language of § 50.660 nor contains a requirement similar to the competitive bidding requirement applicable to counties. We, therefore, conclude that ambulance districts are not subject to the competitive bidding requirements of § 50.660.

The conduct of ambulance district directors related to the letting of contracts and expending of public funds is nevertheless subject to certain fiduciary obligations. Public funds are trust funds and public officers, such as ambulance district directors, are entrusted with their expenditure. City of St. Louis v. Whitley, 283 S.W.2d 490, 493 (Mo. 1955). See also Fulton v. City of Lockwood, 269 S.W.2d 1, 7 (Mo. 1954)("Public officials act in regard to public funds in a trust capacity as servants of the public"). A public official is bound by the same measure of good faith "required of an ordinary trustee towards his *cestui que* trust, or an agent towards his principal." Butler County v. Campbell, 353 Mo. 413, 419, 182 S.W.2d 589, 592 (Mo. 1944). In exercising their duties, public officials "are required to act with reasonable skill and diligence, and to discharge their duties with that prudence, caution and attention which careful men usually exercise in the management of their own affairs." Id.

Thus, in making purchases on behalf of an ambulance district, the directors must exercise the utmost good faith, fidelity and integrity. They must employ their best judgment and skill and perform everything reasonably within their power to limit the district's liabilities and safeguard the funds entrusted to their care. It is left to each district to devise their own procedures to achieve this result.

## CONCLUSION

It is the opinion of this office that § 50.660, RSMo Supp. 1995, does not impose competitive bidding requirements on ambulance districts; however, the fiduciary role of public officers requires that ambulance district directors follow

purchasing procedures which reflect prudence, caution and attention in the management of the public assets under their control.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

NONRESIDENTS:
SCHOOLS:
TUITION:

Section 167.151.1, RSMo 1994, authorizes a school board, in its discretion, to admit nonresidents of Missouri, and to prescribe the tuition those nonresidents must pay to attend its schools.

February 13, 1996

OPINION NO. 95-96

The Honorable Jess Garnett
Representative, District 151
State Capitol Building
Jefferson City, MO 65101

Dear Representative Garnett:

This opinion responds to your question asking:

> If a person owns land located across state lines and presently has the person's home located on the Missouri side of the state line and the person's child is attending an elementary or secondary state school and the person decides to build a new home located outside of Missouri but still located on the property that crosses state lines, may the child still attend Missouri public schools?

In presenting this question you explained:

> A constituent owns eighty acres of land on the Arkansas and Missouri state line with thirty-eight acres on the Arkansas side and forty-two acres on the Missouri side. Both he and his wife are employed in Missouri and live in Missouri at the present time. However, the constituent is planning on building a home on the land, but due to the geographic problems of the area he needs to locate the home in Arkansas. Their daughter is attending R-7 School District in West Plains and would like to keep the daughter

> in the same school after completion of building the new home in Arkansas.

Article IX, section 1 of the Missouri Constitution provides:

> A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law.

(Our emphasis).

By moving beyond Missouri's borders, your constituents would no longer be "persons in this state" and entitled to the constitutionally guaranteed benefit of a free education in Missouri.

To carry out the constitutional mandate, the legislature established, in chapters 160 et seq., a public school system comprised of separate school districts. Section 167.151.1, RSMo 1994, authorizes school boards to admit, in their discretion, "pupils not entitled to free instruction." That provision allows the school board to prescribe the tuition the pupils must pay. Thus, the school board of interest may admit the student who is the subject of your question under § 167.151.1. However, § 167.151.3 provides:

> Any person who pays a school tax in any other district than that in which he resides may send his children to any public school in the district in which the tax is paid and receive as a credit on the amount charged for tuition the amount of the school tax paid to the district; except that any person who owns real estate of which eighty acres or more are used for agricultural purposes and upon which his residence is situated may send his children to public school in any school district in which a part of such real estate, contiguous to that upon which his residence is situated, lies and shall not be charged tuition therefor; so long as thirty-five percent of the real estate is located in the school district of choice. The school district of choice shall count the

> children as eligible pupils for the purpose of distribution of state aid through the foundation formula.

(Our emphasis).

Section 167.151.3 applies to any person residing in a "district." Section 160.011(1), RSMo 1994, defines district to include six-director, urban and metropolitan "school districts." Those terms are likewise defined as types of "school districts." The law favors statutory construction which harmonizes with reason, and which tends to avoid absurd results. Beal v. Board of Educ., Laclede County School Dist. R-1, 637 S.W.2d 309, 311 (Mo. App., S.D. 1982). We conclude that the term "school district," as used in Missouri statutes, refers to the various school districts within Missouri. Therefore, the constituent at issue would not reside in any "school district" if not a Missouri resident. Accordingly, § 167.151.3 would not apply in reducing that constituent's tuition.

## CONCLUSION

It is the opinion of this office that § 167.151.1 authorizes a school board, in its discretion, to admit nonresidents of Missouri, and to prescribe the tuition those nonresidents must pay to attend its schools.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

CITIES, TOWNS AND VILLAGES:
CITY PROPERTY:
CONSTITUTIONAL LAW:
CONVEYANCE OF PROPERTY - REAL ESTATE:
FOURTH CLASS CITIES:
MUSEUMS:
PUBLIC BUILDINGS:

The conveyance of property for nominal consideration from a fourth class city to a not-for-profit corporation for the purpose of establishing a historical museum would violate Article VI, Sections 23 and 25 of the Missouri Constitution.

July 5, 1996

OPINION NO. 98-96

The Honorable Charles Ballard
State Representative, District 140
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Ballard:

This opinion is in response to your question asking:

> May the City of Marshfield, Missouri (4th Class City) convey to the Webster County Historical Society, a Missouri not-for-profit corporation which was formed for the purposes set forth in Section 352.040, RSMo, and which has elected to provide in its Articles of Agreement the provisions of Section 352.040, RSMo, for nominal consideration, a lot upon which is located a Carnegie library building which is no longer being used as a library, for the purpose of establishing a historical museum for public use without violating Article VI, Section 23 of the Constitution of Missouri?

Your question as to whether the City of Marshfield, a city of the fourth class, can convey land that it owns to a private corporation involves both constitutional and statutory provisions.

Prior to addressing the constitutional considerations, there is the matter of statutory authority for the city to act. As a fourth class city, the City of Marshfield can exercise the following powers, and no others: "(1) Those granted in express words; (2) those necessarily or fairly implied in, or incident to, the powers expressly granted; (3) those essential to the declared objects and purposes of the [municipal] corporation -- not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the [municipal] corporation, and the power is denied." State ex rel. Mitchell v. City of Sikeston, 555 S.W.2d 281, 288 (Mo. banc 1977)(quoting Taylor v. Dimmitt, 78 S.W.2d 841, 843 (Mo. 1934)(emphasis in original)); accord State ex rel. St. Louis Housing Authority v. Gaertner, 695 S.W.2d 460, 462 (Mo. banc 1985).

Sections 79.010 and 79.390, RSMo 1994, provide statutory authority for a fourth class city to dispose of property. Section 79.010 provides in relevant part:

> Any city of the fourth class in this state . . . may receive and hold property, both real and personal, within such city . . . ; and may purchase, hold, lease, sell or otherwise dispose of any property, real or personal, it now owns or may hereafter acquire; . . . . [Emphasis added].

Section 79.390 provides in relevant part:

> The board of aldermen . . . may also provide for the erection, purchase or renting of the city hall, workhouse, houses of correction, prisons, engine houses, and any and all other necessary buildings for the city, and may sell, lease, abolish or otherwise dispose of the same, and may enclose, improve, regulate, purchase or sell all public parks or other public grounds belonging to the city, . . . . [Emphasis added].

These sections provide statutory authority for the city to convey property.

In the situation about which you are concerned, there will be nominal consideration for the conveyance so constitutional provisions must also be considered, as such a transaction will essentially be a grant of public property. Article VI, Section 23 of the Missouri Constitution provides:

> No county, city or other political corporation or subdivision of the state shall own or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this constitution.

Article VI, Section 25 of the Missouri Constitution provides, in relevant part:

> No county, city or other political corporation or subdivision of the state shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation except . . . [with exceptions].

These constitutional provisions prohibit a city from granting public money or things of value to any corporation or association with certain exceptions. There is no exception in these constitutional provisions for the property conveyance under consideration.

The constitutional prohibitions against political subdivisions of the state granting public money or property to private entities may not be violated when money and property are expended or utilized for a "public purpose." City of Sikeston, 555 S.W.2d at 291; State ex rel. Farmers' Electric Cooperative, Inc. v. State Environmental Improvement Authority, 518 S.W.2d 68, 74 (Mo. banc 1975). The public purpose exception was discussed in St. Louis Children's Hospital v. Conway, 582 S.W.2d 687 (Mo. banc 1979). The not-for-profit private hospital wanted to expand over a portion of a public street. The City of St. Louis essentially granted that part of the street to the hospital for nominal consideration, requiring that the hospital grant back a perpetual surface easement to the city. The Missouri Supreme Court addressed whether this transaction violated the Missouri Constitution, including Sections 23 and 25 of Article VI. As for the public purpose exception, the hospital argued that the public benefitted substantially from the hospital, especially via free medical services frequently provided to children. The court, in rejecting this argument, stated:

> And with all due respect for the special services rendered to children by the instant hospital, it must be observed that other private corporations also render benefits to the communities in which they are situated. But those benefits cannot be utilized to convert a private corporation or association into a public corporation for the purpose of allowing a municipal government to give its property away without, in effect, completely obliterating the prohibition against giving public property to private persons or associations as provided in our constitution. Id. at 690.

The court concluded that the "gift of this real property by the city to a private institution cannot be approved in view of the prohibitions contained in . . . and art. 6, secs. 23 and 25, Mo.Const., which prohibits the giving away of public property to a private association or corporation." Id. at 691. Therefore, we conclude that the conveyance of the property for nominal consideration from the City of Marshfield to a not-for-profit corporation for the purpose of establishing a historical museum would violate Article VI, Sections 23 and 25 of the Missouri Constitution.

This conclusion is consistent with prior opinions of the Missouri Attorney General. Of particular interest is Opinion No. 9, Antonio, 1979. Relying in part on the constitutional provisions quoted above, this office opined that a third class city could not provide free space to a chamber of commerce or a state license fee agent, could not rent office space to a state license fee agent for less than the reasonable rental value of the space, and could not donate money to various private entities (day care center, senior citizen group, mental health association). See also Opinion Letter No. 88, Sharpe, 1981 (the City of Hannibal does not have authority to make grants to Senior Citizen Center, Inc. - Mark Twain, a not-for-profit corporation); Opinion Letter No. 69, Marshall, 1974 (the City of Ashland may not appropriate funds for Ashland Day Care Center, a not-for-profit corporation); and Opinion Letter No. 88,

Baker, 1978 (a third class county could not give three ambulances to an ambulance district but the county was obligated to get the best price for the ambulances). A copy of each of the prior Attorney General opinions referred to above is enclosed.

In your question you refer to the corporation as having provided in its Articles of Agreement the provisions of Section 352.040, RSMo.[1] Section 352.040, RSMo 1994, provides in part in subsection 1 that "this section shall apply only, and it is hereby expressly limited, to such association or society as may be formed for the purpose of promoting historical studies or natural science, of establishing a museum, library or an art gallery, such educational and scientific purposes being chiefly for the advantage of the public where such corporation is located." Such section further provides in subsection 3 that "[i]f any such corporation dissolve, its property shall be vested in the city or town in which such corporation is located, to be taken and held for the benefit of the people of such city or town, to the same purposes, uses and trusts as such property was held by such corporation." We do not see these characteristics as creating an exception to the prohibitions of Sections 23 and 25 of Article VI of the Missouri Constitution.

## CONCLUSION

It is the opinion of this office that the conveyance of property for nominal consideration from a fourth class city to a not-for-profit corporation for the purpose of establishing a historical museum would violate Article VI, Sections 23 and 25 of the Missouri Constitution.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosures

[1]We understand the not-for-profit corporation which is the subject of your question is organized under Chapter 355, RSMo. You state the corporation has provided in its Articles of Agreement the provisions of Section 352.040. Because of the conclusion we reach, it is unnecessary to address the relationship between Chapter 355 and Section 352.040.

DONATIONS: A not for profit corporation may be organized under
PORT AUTHORITY: Chapter 355, RSMo 1994, to solicit donations on behalf of a port authority established under Chapter 68, RSMo 1994, and the port authority may accept those donations.

January 31, 1996

OPINION NO. 101-96

The Honorable Peter D. Kinder
Senator, District 27
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Kinder:

This opinion responds to your question asking:

> May the Southeast Missouri Regional Port Authority, a political subdivision of the state of Missouri established under Chapter 68, RSMo, organize and wholly own a not-for-profit Missouri corporation for the purposes of seeking donations (equipment or money) that will benefit the Port Authority? (Can the Port set up a corporation that will act as a foundation?)

Chapter 355[1] sets forth the general not for profit corporation law. Not for profit corporations issue no stock and, therefore, are not "owned." Section 355.020.1(2)(b). Such corporations may have members. Section 355.181. Only "individuals" or "natural persons" may act as incorporators. Sections 355.096.1 and 355.066(19). Likewise, only individuals or natural persons may act as such corporation's directors. Sections 355.066(9) and 355.321. Therefore, the Port Authority, as a political subdivision, can neither "own" nor organize any such corporation. However, individuals who support the Port Authority could organize such corporation.[2] See

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[1]All statutory references are, unless otherwise noted, to the 1994 Revised Statutes of Missouri (RSMo).

[2]We do not address the status of such corporation for purposes of federal tax law or the deductibility of any donations to it.

Section 355.025 setting forth the purposes for which a not for profit corporation may be formed and Section 355.131 authorizing such corporation to make donations.

Sections 68.010, et seq., authorize port authorities. Section 68.025 sets forth their powers to, among other things:

> (15) Accept gifts, grants, loans or contributions from the United States of America, the state of Missouri, political subdivisions, municipalities, foundations, other public or private agencies, individual, partnership or corporations[.]

"[A] regional port authority's powers are 'limited to those expressed or implied by statute, and any doubt should be construed against the grant of power.'" Attorney General Opinion No. 15-87 (quoting State ex rel. St. Louis Housing Authority v. Gaertner, 695 S.W.2d 460, 462 (Mo. banc 1985)). We conclude that § 68.025(15) expressly empowers the Port Authority to accept contributions from a not for profit corporation. Therefore, if a not for profit corporation was organized to support the Port Authority, the Port Authority could accept donations from that corporation.

## CONCLUSION

It is the opinion of this office that a not for profit corporation may be organized under Chapter 355, RSMo 1994, to solicit donations on behalf of a port authority established under Chapter 68, RSMo 1994, and the port authority may accept those donations.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ADULT ABUSE:
COURT COSTS:
COUNTY FUNDS:

Section 455.027.1, RSMo 1994, prohibiting courts from charging adult abuse or stalking victims an advance filing fee or bond when they file petitions for protection, may cause counties to initially incur, under § 476.270, RSMo 1994, certain personal service expenses for those cases. However, § 476.270 imposes no duty on counties to advance court filing fees as those fees are not the court's expenditures.

February 14, 1996

OPINION NO. 102-96

The Honorable Mike Lybyer
State Senator, District 16
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Lybyer:

This opinion responds to your questions concerning costs in adult abuse cases:

> (1) Does § 455.027.1, RSMo, require that a county advance the service or filing fees of the petitioner when § 476.270, RSMo, states that all expenditures accrued by a circuit court shall be paid out of the county treasury?
>
> (2) If the answer to question (1) is yes, does requiring the county to advance such fees represent an unfunded mandate in violation of Article X, Section 21 of the Missouri Constitution when the section requiring county expenditures (§ 476.270) was enacted and amended prior to the adoption of said Article and Section?

Sections 455.010 to 455.085, RSMo 1994 and Supp. 1995, set forth Missouri's adult abuse law. Section 455.020.1[1] authorizes any adult who has been abused by an adult family or household member, or who has been a victim of stalking, to seek court

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[1] All statutory references are, unless otherwise indicated, to the 1994 Revised Statutes of Missouri (RSMo).

relief by filing a verified petition alleging the abuse or stalking. Section 455.035 authorizes the court, upon the filing of such a petition, to issue an ex parte order of protection. Section 455.045, RSMo 1994, and § 455.050, RSMo Supp. 1995, set forth the relief the court may impose by such order. Section 455.040.1, RSMo Supp. 1995, requires the court, unless it determines a continuance is in order, to hold a hearing within fifteen days of the petition's filing. Section 455.040.2, RSMo Supp. 1995, requires the court to have the petition, a notice of hearing, and a copy of any ex parte order, personally served upon the respondent at least three days prior to such hearing. After the hearing, the court may issue a full order of protection for a definite period of time not to exceed one hundred eighty days which is renewable upon a proper showing. Section 455.040.1, RSMo Supp. 1995. Section 455.050, RSMo Supp. 1995, sets forth the relief the court may grant in any such full order. Section 455.075 authorizes the court to award a party that party's costs and attorney's fees.

Section 455.027 states:

> 1. No advance filing fees or bond shall be required for filing a petition in an action commenced under sections 455.010 to 455.085.
>
> 2. The clerk shall advise the petitioner of his right to file a financial statement indicating the petitioner's income and liabilities. This information may be required by the court and shall be considered before assessment of court costs.
>
> 3. Assessment of court costs or a determination of indigency shall be considered by the court at the time of a termination of the proceeding.

Section 476.270 states:

> All expenditures accruing in the circuit courts, except salaries and clerk hire which is payable by the state, except all expenditures accruing in the municipal divisions of the circuit court, and except as otherwise provided by law, shall be paid out of the treasury of the county in which the court is held in the same manner as other demands.

(our emphasis). In State ex rel. Henderson v. Blaeuer, 723 S.W.2d 589, 590 (Mo. App., W.D. 1987), the court relied upon § 476.270 in imposing publication expenses upon the county in a divorce proceeding involving an indigent.

Your question concerns filing and service fees. We will respond separately as to the two types of fees.

Filing fees are charges that the court imposes; they are not expenditures the court makes. Therefore, § 476.270 does not apply to filing fees and the county has no duty to "advance" them under that provision.

Most service fees are not actually paid until the conclusion of the case. Trail v. Somerville, 22 Mo. App. 308, 314 (St.L.Ct.App. 1886) ("[E]xcept where interlocutory orders awarding costs are made, [officers of the court] must, as a general rule, wait for their payment until the final determination of the suit."), and then are paid by the losing party. Section 455.040.2, RSMo Supp. 1995, requires the court to have adult abuse and stalking petitions personally served upon respondents. Section 455.027 only prohibits requiring "advance filing fees or bond" for those petitions. It is silent on who initially bears personal service expenses such as out-of-state service fees. And although § 455.027.1 is silent as to who later pays fees and costs, § 455.027.3 specifically provides for "[a]ssessment of costs or a determination of indigency at the time of a termination of the proceeding."

We should give a statute the construction that will best effect its purpose. Household Fin. Corp. v. Robertson, 364 S.W.2d 595 (Mo. 1963). The clear purpose of § 455.027 was to allow adult abuse or stalking victims to seek timely relief without first incurring fees and costs and to allow the court to make determinations of such victims' indigency upon "the termination of proceedings." Without service of the petition and the court's ex parte order, the victim can have no effective relief. Thus, § 455.027 prohibits the court from imposing upon the petitioner, prior to the conclusion of the case, expenses incident to personal service of the petition. By requiring no filing fee or bond to secure court costs, during the pendency of the action § 455.027.1 may impose the burden of those costs, to the extent they must be paid prior to the conclusion of the case, initially upon the court. The county is liable for the court's expenditures under § 476.270; therefore, the county must reimburse those expenses the court pays.

Your second question concerns Article X, § 21, of the Missouri Constitution, which provides:

> The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties . . . . A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties . . . , unless a state appropriation is made and disbursed to pay the county . . . for any increased costs.

You question whether § 455.027.1 violates that constitutional provision. However, we must respectfully decline to opine on that question as it has been the long-standing policy of this office to render no opinion on the constitutionality of state laws. *See* Gershman Inv. Co. v. Danforth, 517 S.W.2d 33, 35 (Mo. banc 1974).

## CONCLUSION

It is the opinion of this office that § 455.027.1, prohibiting courts from charging adult abuse or stalking victims an advance filing fee or bond when they file petitions for protection, may cause counties to initially incur, under § 476.270, certain personal service expenses for those cases. However, § 476.270 imposes no duty on counties to advance court filing fees as those fees that are not the court's expenditures.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

CITIES, TOWNS AND VILLAGES:
CITY RECORDS:
FOURTH CLASS CITY:
MAYOR:
RECORDS:
SUNSHINE LAW:

The mayor of a fourth class city has the authority under Section 610.120, RSMo 1994, to look at records pertaining to cases closed under Section 610.105, RSMo 1994, for the purpose of reviewing the job performance of the appointed city prosecutor.

January 12, 1996

OPINION NO. 106-96

The Honorable Kenneth C. McManaman
32nd Judicial Circuit
Municipal Court Division
1736 N. Kingshighway
Cape Girardeau, Missouri 63701

Dear Judge McManaman:

This opinion is in response to your questions concerning the authority of a mayor of a fourth class city to see information on cases in municipal court which are nolle prossed, dismissed or the accused is found not guilty or imposition of sentence is suspended. You indicate the purpose of such review is to determine how well the appointed city prosecutor is doing his job.

Section 610.105, RSMo 1994, provides that the records about which you are concerned are closed with certain specified exceptions. Such section provides:

> **610.105. Effect of nolle pros--dismissal--sentence suspended on record.**--If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated except that the disposition portion of the record may be accessed for purposes of exculpation and except as provided in section 610.120. (Emphasis added.)

Section 610.120, RSMo 1994, to which Section 610.105 refers, provides:

> **610.120. Records to be confidential--accessible to whom, purposes--child care, defined.**--1. Records required to be closed shall not be destroyed; they shall be inaccessible to the general public and to all persons other than the defendant except as provided in this section and section 43.507, RSMO. They shall be available to the sentencing advisory commission created in section 558.019, RSMo, for the purpose of studying sentencing practices, and only to courts, law enforcement agencies, child care agencies, department of revenue for driving record purposes, facilities as defined in section 198.006, RSMo, in-home services provider agencies as defined in section 660.250, RSMo, the division of workers' compensation for the purposes of determining eligibility for crime victims' compensation pursuant to sections 595.010 to 595.075, RSMo, and federal agencies for purposes of prosecution, sentencing, parole consideration, criminal justice employment, child care employment, nursing home employment and to federal agencies for such investigative purposes as authorized by law or presidential executive order. These records shall be made available for the above purposes regardless of any previous statutory provision which had closed such records to certain agencies or for certain purposes. All records which are closed records shall be removed from the records of the courts, administrative agencies, and law enforcement agencies which are available to the public and shall be kept in separate records which are to be held confidential and, where possible, pages of the public record shall be retyped or rewritten omitting those portions of the record which deal with the defendant's case. If retyping or rewriting is not feasible because of the permanent nature of the record books, such record entries shall be blacked out and recopied in a confidential book. (Emphasis added.)
>
> * * *

This office in Opinion Letter No. 51-87 addressed a similar issue involving a third class city. A copy of the opinion is enclosed. In that opinion, this office reviewed the statutes setting out the powers and duties of the mayor of a third class city and

concluded "the mayor could be considered to be a person from a 'law enforcement agency' as that term is used in Section 610.120" and so could look at records closed under Sections 610.100 to 610.120, RSMo 1986, "only 'for purposes of prosecution, litigation, sentencing, parole consideration . . .'." Opinion Letter No. 51-87, page 3. The reasoning in that opinion is applicable to the situation about which you are concerned.

The statutes in Chapter 79, RSMo, setting out the powers and duties of a mayor of a fourth class city are similar to the statutes discussed in Opinion Letter No. 51-87 setting out the powers and duties of a mayor in a third class city operating under the provisions of Chapter 77, RSMo. Section 79.120, RSMo 1994, provides:

> **79.120. Mayor may sit in board.**--The mayor . . . shall exercise a general supervision over all the officers and affairs of the city, and shall take care that the ordinances of the city, and the state laws relating to such city, are complied with.

Section 79.200, RSMo 1994, provides:

> **79.200. Mayor shall have the power to enforce laws.**--The mayor shall be active and vigilant in enforcing all laws and ordinances for the government of the city, and he shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty; and he is hereby authorized to call on every male inhabitant of the city over eighteen years of age and under fifty, to aid in enforcing the laws.

Because of the role of the mayor of a fourth class city in enforcing laws and ordinances, we conclude that the mayor of a fourth class city is a person from a "law enforcement agency" as that term is used in Section 610.120.

In Arcelia's Mexicana, Inc. v. Supervisor of Liquor Control, 824 S.W.2d 72 (Mo.App. 1991), the court considered a prior version of Section 610.120. The court interpreted Section 610.120, RSMo Supp. 1989, as granting access to "law enforcement agencies" only for the purposes enumerated in Section 610.120. The court stated:

> Thus, Section 610.120.1 [RSMo Supp. 1989] propounds a

> two-pronged test, both parts of which must be met to gain access to a closed record: (1) the entity requesting access (here, the respondent) must be a group authorized by the statute to have such access, and (2) the access must be for a proper purpose, as defined by statute.

Id. at 74. The applicable provision of Section 610.120, RSMo Supp. 1989, under consideration by the court stated:

> They [the closed records] shall be available only to courts, law enforcement agencies, and federal agencies for purposes of prosecution, sentencing, parole consideration, criminal justice employment, child care employment, nursing home employment and to federal agencies for such investigative purposes as authorized by law or presidential executive order. . ..

Id. Because of the statutory amendments to Section 610.120 which have occurred subsequent to this case, it is unclear if law enforcement agencies are still limited to accessing closed records only for the enumerated purposes. To resolve the issue about which you are concerned, we need not decide such issue. One of the enumerated purposes is "criminal justice employment." You have stated the purpose of access is to evaluate the job performance of the appointed city prosecutor. Such purpose would be related to "criminal justice employment" and would be a statutorily permitted purpose for accessing the closed records. So regardless of whether or not law enforcement agencies are limited to accessing closed records only for the enumerated purposes, access by the mayor to the closed records for evaluating the job performance of the appointed city prosecutor is permissible.

You further inquire about the authority of the mayor to share information from the closed records with members of the city council and other persons. Under the provisions of Section 610.105 and Section 610.120, the records are closed with certain enumerated exceptions. It would not be permissible for the mayor to share information from the closed records except as authorized in Sections 610.105 and 610.120. Furthermore, Section 610.115, RSMo 1994, provides:

> **610.115. Penalty.**--A person who knowingly violates any provision of section 610.100, 610.105, 610.106, or 610.120 is guilty of a class A misdemeanor.

Therefore, the mayor may not share information from the closed records with the city council or other persons except when authorized by Sections 610.105 or 610.120.

## CONCLUSION

It is the opinion of this office that the mayor of a fourth class city has the authority under Section 610.120, RSMo 1994, to look at records pertaining to cases closed under Section 610.105, RSMo 1994, for the purpose of reviewing the job performance of the appointed city prosecutor.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ARREST:
PEACE OFFICERS: A member of a multijurisdictional enforcement group (MEG) may, under § 195.505.2, RSMo 1994, make an arrest anywhere in Missouri so long as the arrest is within the scope of the group's investigation and proper notice is given to the local authorities. The member may make such arrest notwithstanding that the member fails to meet peace officer certification standards in the jurisdiction of the arrest.

January 29, 1996

OPINION NO. 107-96

The Honorable Ted House
State Senator, District 2
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator House:

This opinion responds to your question asking:

> Would a Missouri sheriff's deputy, who is a full-time sworn deputy sheriff on special assignment to a multijurisdictional enforcement group (MEG), have jurisdiction under Section 195.505, statewide, for an investigation and arrest?

The Intergovernmental Drug Laws Enforcement Act, §§ 195.501 to 195.511,[1] authorizes MEGs. Section 195.505 of that act provides:

> 1. Any two or more political subdivisions or the state highway patrol and any one or more political subdivisions may by order or ordinance agree to cooperate with one another in the formation of a multijurisdictional enforcement group for the purpose of intensive professional investigation of narcotics and drug law violations.

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[1]All statutory references are, unless otherwise indicated, to the 1994 Revised Statutes of Missouri (RSMo).

> 2. The power of arrest of any peace officer who is duly authorized as a member of a MEG unit shall only be exercised during the time such peace officer is an active member of a MEG unit and only within the scope of the investigation on which the MEG unit is working. Notwithstanding other provisions of law to the contrary, such MEG officer shall have the power of arrest, as limited in this subsection, anywhere in the state and shall provide prior notification to the chief of police of the municipality in which the arrest is to take place or the sheriff of the county if the arrest is to be made in his venue. If exigent circumstances exist, such arrest may be made; however, notification shall be made to the chief of police or sheriff, as appropriate, as soon as practical. The chief of police or sheriff may elect to work with the MEG unit at his option when such MEG is operating within the jurisdiction of such chief of police or sheriff.

(Our emphasis).

Your inquiry concerns a MEG member's authority to investigate crime and make arrests because that member has an inadequate number of peace officer training hours for peace officer certification in some jurisdictions where that member might make arrests. That member does, however, meet the peace officer training requirements for that member's home jurisdiction.

Section 590.110.1 requires peace officers to obtain peace officer certification from the director of the Missouri Department of Public Safety before a public law enforcement agency may appoint them. While chapter 590 sets minimum training standards, § 590.105.4 allows individual jurisdictions to impose stricter standards. Therefore, a peace officer that meets one jurisdiction's standards, may not meet another's. Section 590.130 provides that no arrest is unlawful solely because the arresting peace officer is not certified.

We question whether chapter 590 has any relevance to a MEG member's power to investigate crime or to make arrests, particularly in light of § 590.130.[2] However, if peace officer certification was relevant, § 195.505.2 clearly authorizes a MEG member, notwithstanding that or other provisions of the law to the contrary, to arrest anywhere in the state, so long as the member exercises that power while an active member of the group, gives the proper notice to local authorities, and makes the arrest within the scope of the group's investigation.

## CONCLUSION

It is the opinion of this office that a member of a multijurisdictional enforcement group (MEG) may, under § 195.505.2, make an arrest anywhere in Missouri so long as the arrest is within the scope of the group's investigation and proper notice is given to the local authorities. The member may make such arrest notwithstanding that the member fails to meet peace officer certification standards in the jurisdiction of the arrest.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

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[2]Chapter 590 does not address powers of arrest. However, in Forste v. Benton, 792 S.W.2d 910, 914-5 (Mo. App., S.D. 1990), the court of appeals relied in part on § 590.100(4) and (5)'s definitions of "peace officer" and "reserve officer" in concluding that a City of Springfield reserve police officer had no authority to make an arrest for suspicion of a motorist driving while intoxicated.

COMPENSATION:
COUNTIES:
PROSECUTING ATTORNEY:
TERM OF OFFICE:

Pursuant to Section 105.050, RSMo 1994, the next election for Washington County Prosecuting Attorney will be in November 1998, and the Washington County Prosecuting Attorney is not entitled to the increase in compensation provided by Conference Committee Substitute for Senate Committee Substitute for House Bill 424, 88th General Assembly, First Regular Session (1995) during the current term of office.

January 22, 1996

OPINION NO. 113-96

Mr. John D. Rupp, Jr.
Washington County Prosecuting Attorney
102 North Missouri Street
Potosi, Missouri 63664

Dear Mr. Rupp:

This opinion is in response to your questions concerning the term of office of an appointed prosecuting attorney. Your specific questions are:

> 1. What is the term of office for an attorney who was appointed by the Governor to fill the unexpired term of an elected prosecuting attorney who had resigned his office?
>
> 2. [Where] the general assembly authorized a pay increase for the prosecuting attorney of certain counties that have correctional facilities in those counties to take effect in September 1995, is an attorney who was appointed in October 1995 to fill the unexpired term of the prosecuting attorney who was elected in January 1994 and who resigned in October of 1995 entitled to legally receive said salary increase? (Said salary increase imposes no new duties or responsibilities on said office holder).

Your first question essentially asks whether your term of office as the appointed prosecuting attorney will end after the next general election in November 1996, or will end in 1998, the end of the term had the prior prosecutor not resigned. Section 105.030, RSMo 1994, states, in relevant part:

> **105.030. Vacancies, how filled.** - Whenever any vacancy, caused in any manner or by any means whatsoever, occurs or exists in any state or county office originally filled by election of the people, . . . the vacancy shall be filled by appointment by the

> governor . . . ; and the person appointed after duly qualifying and entering upon the discharge of his duties under the appointment shall continue in office until the first Monday in January next following the first ensuing general election, at which general election a person shall be elected to fill the unexpired portion of the term, or for the ensuing regular term, as the case may be, and the person so elected shall enter upon the discharge of the duties of the office the first Monday in January next following his election, except that when the term to be filled begins on any day other than the first Monday in January, the appointee of the governor shall be entitled to hold office until such other date. This section shall not apply to vacancies in county offices in any county which has adopted a charter for its own government under section 18, article VI of the constitution. [Emphasis added].
>
> * * *

Section 115.121, RSMo 1994, states, in relevant part:

> **115.121. General election, when held - primary election, when held - general municipal election day defined.** - 1. The general election day shall be the first Tuesday after the first Monday in November of even-numbered years.
>
> * * *

Section 105.050, RSMo 1994, states, in relevant part:

> **105.050. Vacancy in certain offices - how filled.** - If any vacancy shall happen from any cause in the office of the attorney general, circuit attorney, prosecuting attorney or assistant prosecuting attorney, the governor, upon being satisfied that such vacancy exists, shall appoint some competent person to fill the same until the next regular election for attorney general, prosecuting attorney or assistant prosecuting attorney, as the case may be; . . .. [Emphasis added].

Section 56.010, RSMo 1994, states, in relevant part:

> **56.010. Prosecuting attorney - election - qualifications.** - At the general election to be held in this state in the year A.D. 1982, and every four years thereafter, there shall be elected in each county of this state a prosecuting attorney, who . . . shall hold his office for four years, and until his successor is elected, commissioned and qualified.

Also relevant is Section 56.020, RSMo 1994, which states:

> **56.020. When term begins.** - Prosecuting attorneys elected under the provisions of this chapter shall enter upon the discharge of their duties on the first day of January next after they shall have been elected.

The issue is whether Section 105.030 controls, and thus the appointed prosecutor's term of office is until the first day of January 1997, with an election for prosecuting attorney taking place in November 1996, or whether Section 105.050 controls, and thus the appointed prosecutor's term of office is until the first day of January 1999, with an election taking place in November 1998. It is a "well-established rule of statutory construction that where one statute deals with a particular subject in a general way, and a second statute treats a part of the same subject in a more detailed way, the more general should give way to the more specific." O'Flaherty v. State Tax Commission of Missouri, 680 S.W.2d 153, 154 (Mo. banc 1984); accord Reece v. Reece, 890 S.W.2d 706, 711 (Mo. App. 1995).

Given this rule, and the statutes above-quoted, it is the opinion of this office that Section 105.050, which specifically addresses vacancies in the office of prosecuting attorney, controls over the general provisions of Section 105.030.[1] As such, whether elected or appointed, a prosecuting attorney's term of office ends on the last day of December of a general election year which is an election year for prosecuting attorneys -- the year 1982, A.D., and every four years thereafter (1986, 1990, 1994, 1998, 2002, etc.). In your case, the next election for prosecuting attorney should be in November 1998, just as it would be had there been no vacancy. And your term of office will have ended on January 1, 1999, when the next term begins.

We now turn to your second question. It will be helpful to provide some background information. Section 56.066.2, RSMo 1994, provided additional compensation to prosecuting attorneys of second-class counties which "contain[ed] facilities . . . operated by the department of corrections and human resources." The level of compensation depended upon the inmate population at such facilities. This provision was amended in 1995 by Conference Committee Substitute for Senate Committee Substitute for House Bill 424, 88th General Assembly, First Regular Session (hereinafter "H.B. 424"), to apply to "any county which contains facilities which are operated by the department of corrections" (emphasis added),

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[1]You indicate some concern that Section 105.050 was repealed by House Committee Substitute for Senate Substitute for Senate Bill 250, 82nd General Assembly, First Regular Session (1983). It does appear that there is inconsistency in that bill as to which section is repealed – 105.030 or 105.050. But in looking at the bill as a whole, it appears that at only one place does "105.050" appear rather than "105.030." Elsewhere, "105.030" is used, and the section amended is 105.030. It is our opinion, and apparently that of the Revisor of Statutes, that the single "105.050" is a typographical error and thus 105.050 was not repealed.

rather than second-class counties only. The amount of additional compensation still depends upon the inmate population. The provision thus would allow prosecuting attorneys of any county in which Department of Corrections' facilities are located to receive additional compensation. The Potosi Correctional Center, operated by the Department of Corrections, is located in Washington County. Washington County is a third-class county, and as such the Washington County prosecuting attorney was not eligible to receive additional compensation under Section 56.066.2 prior to August 28, 1995, the effective date of H.B. 424.

Article VII section 13 of the Missouri Constitution states:

> **Section 13. Limitation on increase of compensation and extension of terms of office.** The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended.

The main issue[2] in this second question is the meaning of the phrase, "term of office" in the above-quoted constitutional provision. We first note that if the prior prosecutor had not resigned, he would not be entitled to the increase in compensation if and until he was re-elected to the position for the term beginning January 1, 1999. This is because H.B. 424 was not in effect at the time he commenced his term of office in January 1995. State ex rel. Harvey v. Linville, 300 S.W. 1066 (Mo. 1927)(it is the law in force at the time the official begins the term of office which determines his compensation); Folk v. City of St. Louis, 157 S.W. 71 (Mo. 1913)(addressing Article XIV section 8 of the Constitution of 1875, the predecessor to Article VII section 13); Attorney General Opinion No. 92, Vogel, January 29, 1953.

The question is whether your term of office, for the purposes of Article VII section 13, began on January 1, 1995, or your term began on the date you took office after appointment by the governor, which you report to have been November 1, 1995. In the first instance, you would not be entitled to the increase in compensation of H.B. 424 during your current term of office. In the second instance, your term would have begun after H.B. 424 was in effect; thus you would be entitled to the increase in compensation during this term. Which is the "term of office" in this instance?

In Attorney General Opinion No. 62, Milfelt, June 30, 1961, this office addressed a similar issue. There, Jefferson County became a county of the second class on January 1, 1961. Though it did not have a county auditor before, it was then authorized to have such an

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[2]You note that there are no additional duties imposed by the legislature in connection with the increase in compensation. "[T]he courts have indicated that the compensation of officers may be increased during their terms if such is compensation for the performance of new and additional duties not ordinarily germane to the office." Attorney General Opinion Letter No. 99-84 (citing Mooney v. County of St. Louis, 286 S.W.2d 763, 766 (Mo. 1956); accord Hawkins v. City of Fayette, 604 S.W.2d 716, 720-21 (Mo. App. 1980).

officer. The elections for county auditors were every four years. The last such election had been in 1958, with terms of office beginning in January 1959. In the 1959 legislative session, the compensation of auditors for second-class counties was increased from $4,000 to $5,000. Auditors who were in office before the bill authorizing the increase was effective clearly were not entitled to the increase during their current term. The governor appointed a county auditor for Jefferson County, who took office January 1, 1961. The issue was when the appointed auditor's "term of office" began -- January 1959 or January 1961. We opined that the term of office, for the purposes of Article VII section 13, began in January 1959, and thus the appointed auditor was not entitled to the $1,000 increase in compensation during his current term.

In Attorney General Opinion Letter No. 170-87, we stated, regarding Article VII section 13:

> The phrase "term of office" has been interpreted to mean the statutory length of time for the term of the particular office, whether the actual holder of that office changes during the term or not. (citing State ex rel. Emmons v. Farmer, 196 S.W. 1106 (Mo. banc 1917)).

Thus it is the opinion of this office that your current term of office, for the purposes of Article VII section 13, began on January 1, 1995. As such, you are not entitled to the increase in compensation authorized by H.B. 424 during this term of office, which will have ended January 1, 1999.

## CONCLUSION

It is the opinion of this office that pursuant to Section 105.050, RSMo 1994, the next election for Washington County Prosecuting Attorney will be in November 1998, and the Washington County Prosecuting Attorney is not entitled to the increase in compensation provided by Conference Committee Substitute for Senate Committee Substitute for House Bill 424, 88th General Assembly, First Regular Session (1995) during the current term of office.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

BOARDING PRISONERS:
CITY PRISONERS:
COUNTY JAIL:
FOURTH CLASS CITIES:
JAILS:
PRISONERS:

Pursuant to Section 221.070, RSMo 1994, a person committed to the county jail by lawful authority for a municipal ordinance violation, if convicted of the municipal ordinance violation, is liable to the municipality for the costs of incarceration.

August 23, 1996

OPINION NO. 115-96

The Honorable Harold Caskey
State Senator, District 31
State Capitol Building
Jefferson City, MO 65101

and

The Honorable Vicky Hartzler
State Representative, District 124
State Capitol Building
Jefferson City, MO 65101

Dear Senator Caskey and Representative Hartzler:

Each of you has requested an opinion of this office relating to a fourth class city charging prisoners who are incarcerated in the county jail due to a violation of a municipal ordinance for the costs of the prisoners' incarceration. The question posed by Senator Caskey is:

> May a fourth class city charge individuals for the cost of incarceration in a county jail?

The question posed by Representative Hartzler is:

> May the City of Harrisonville bill Harrisonville individuals for the cost of their incarceration at the County Jail?

Your opinion requests indicate that the City of Harrisonville, a fourth class city, houses some of its prisoners in the Cass County jail. The county bills the city for the costs of incarceration. We understand your question to be whether the city can in turn charge the incarcerated individuals for those costs.[1]

Section 479.180, RSMo 1994, authorizes municipal prisoners to be incarcerated in the county jail. Such section provides:

> **479.180. Commitment in county jail, when - duty of sheriff.** - If a municipality has no suitable and safe place of confinement, the defendant may be committed to the county jail by the judge, and it shall be the duty of the sheriff, if space for the prisoner is available in the county jail, upon receipt of a warrant of commitment from the judge to receive and safely keep such prisoner until discharged by due process of law. The municipality shall pay the board of such prisoner at the same rate as may now or hereafter be allowed by law to such sheriff for the keeping of other prisoners in his custody.

Section 221.070, RSMo 1994, provides for certain prisoners to be liable for their costs of incarceration. This section provides in part:

> **221.070. Prisoners liable for cost of imprisonment.** - Every person who shall be committed to the common jail within any county in this state, by lawful authority, for any offense or misdemeanor, if he shall be convicted thereof, shall bear the expense of carrying him or her to said jail,

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[1]We have not been provided information regarding the amount billed by the county to the city or the amount proposed to be billed by the city to each prisoner. Therefore, this opinion only addresses the authority of the city to bill the prisoner and does not address the amount to be billed.

> and also his or her support while in jail, before he or she shall be discharged; . . . . [Emphasis added.]

In determining the applicability of Section 221.070 to the situation you describe, we must determine if "offense," as used in Section 221.070, includes a violation of a municipal ordinance. Statutory construction must always seek to find and further legislative intent. Centerre Bank of Crane v. Director of Revenue, 744 S.W.2d 754, 759 (Mo. banc 1988). "If the statute is ambiguous, we attempt to construe it in a manner consistent with the legislative intent, giving meaning to the words used within the broad context of the legislature's purpose in enacting the law." Sullivan v. Carlisle, 851 S.W.2d 510, 512 (Mo. banc 1993). "[I]n construing a statute we may take into consideration statutes involving similar or related subject matter when such statutes shed light upon the meaning of the statute being construed. . . . This is so even though the statutes are found in different chapters and were enacted at different times." Weber v. Missouri State Highway Commission, 639 S.W.2d 825, 829 (Mo. 1982).

Section 221.070, as it currently reads, has been unchanged since at least 1939. § 9199, RSMo 1939. Even before then, the phrase "offense or misdemeanor" was used in qualifying when the prisoner might be liable for the costs of his incarceration. § 8530, RSMo 1929; § 12555, RSMo 1919; § 1577, RSMo 1909; § 8110, RSMo 1899. The statutes in effect in 1939 and prior years referred to municipal ordinance violations as "offenses." For example, the statutes which gave cities the power to have a municipal judge uniformly stated that a municipal judge had jurisdiction "to hear and determine all offenses against the ordinances" of such cities (emphasis added). § 7122, RSMo 1939; § 6972, RSMo 1929; § 8423, RSMo 1919; § 9325, RSMo 1909; § 5919, RSMo 1899; § 6905, RSMo 1939; § 6759, RSMo 1929; § 8246, RSMo 1919; § 9183, RSMo 1909; § 5791, RSMo 1899; § 6794, RSMo 1939; § 6666, RSMo 1929; § 8153, RSMo 1919; § 7437, RSMo 1939; § 7284, RSMo 1929; § 8699, RSMo 1919; § 9577, RSMo 1909; § 6253, RSMo 1899. Of more recent import is that some of the Missouri Supreme Court Rule 37 suggested forms use the word "offense" and indicate that such term includes ordinance violations as well as violations of statutes. See Form 37.A, Uniform Complaint and Summons; Form 37.B, Record of Conviction. The use of the term "offense" in these statutes and rules indicates that the meaning given such term by the legislature and the courts includes violations of municipal ordinances. Accordingly, we conclude that the term "offense" as used in Section 221.070 includes a municipal ordinance violation.

## CONCLUSION

It is the opinion of this office that, pursuant to Section 221.070, RSMo 1994, a person committed to the county jail by lawful authority for a municipal ordinance violation, if convicted of the municipal ordinance violation, is liable to the municipality for the costs of incarceration.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

January 17, 1996

OPINION LETTER NO. 121-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1994. The statement which you have submitted is as follows:

> Shall a law be enacted to make it a class D felony to keep or train any animal or bird for fighting or wrestling another animal, bird or person, or, for amusement or gain, cause any animal or bird to fight or wrestle another animal or bird in an exhibition, or permit such acts on one's premises, or aid or abet such acts; and make it a class A misdemeanor to be knowingly present during or in preparation for such activities or bring a juvenile to observe or participate in such felony activities?

See our Opinion Letter No. 229-95.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

January 16, 1996

OPINION LETTER NO. 122-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as A1.

We conclude the petition must be rejected as to form for the following reasons:

1. At the top of the back side of the initiative petition is the language "An Initiative to Raise the Missouri Minimum Wage." Such language appears to be a title for the initiative petition. Section 116.334, RSMo 1994, provides for the petition title to be drafted by the Secretary of State, and space is provided on the front of the petition for the petition title drafted by the Secretary of State. There is no statutory provision authorizing a second title drafted by the circulators of the petition to appear on the petition.

2. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows, "[n]othing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be

enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

January 16, 1996

OPINION LETTER NO. 123-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as A2.

We conclude the petition must be rejected as to form for the following reason:

1. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows, "[n]othing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

Because of our rejection of the form of the petition for the reason stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P. O. Box 899
(314) 751-3321

January 16, 1996

OPINION LETTER NO. 124-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook,

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as A3.

We conclude the petition must be rejected as to form for the following reasons:

1. At the top of the back side of the initiative petition is the language "An Initiative to Reward Work by Raising the Missouri Minimum Wage." Such language appears to be a title for the initiative petition. Section 116.334, RSMo 1994, provides for the petition title to be drafted by the Secretary of State, and space is provided on the front of the petition for the petition title drafted by the Secretary of State. There is no statutory provision authorizing a second title drafted by the circulators of the petition to appear on the petition.

2. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows: "Nothing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

January 16, 1996

OPINION LETTER NO. 125-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as A4.

We conclude the petition must be rejected as to form for the following reasons:

1. At the top of the back side of the initiative petition is the language "An Initiative to Create a Family Wage." Such language appears to be a title for the initiative petition. Section 116.334, RSMo 1994, provides for the petition title to be drafted by the Secretary of State, and space is provided on the front of the petition for the petition title drafted by the Secretary of State. There is no statutory provision authorizing a second title drafted by the circulators of the petition to appear on the petition.

2. The proposed amendment to Section 290.502 is headed "Section 1. Required Family Wage." Such heading does not reflect the words of the proposed statute in that the words "family wage" do not appear in the proposed statute. The use of the words "family wage" in the heading might be deemed advertising in favor of the adoption of the statutory amendment. Advertising on an initiative petition is not condoned by the courts. See Buchanan v. Kirkpatrick, 615 S.W.2d 6, 12 (Mo. banc

1981). Regardless of whether such language might be deemed advertising, we decline to approve the section heading because it does not fairly reflect the words of the proposed statute.

3. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows, "[n]othing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P. O. Box 899
(314) 751-3321

January 16, 1996

OPINION LETTER NO. 126-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook,

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as A5.

We conclude the petition must be rejected as to form for the following reasons:

1. At the top of the back side of the initiative petition is the language "An Initiative to Create a Living Wage." Such language appears to be a title for the initiative petition. Section 116.334, RSMo 1994, provides for the petition title to be drafted by the Secretary of State, and space is provided on the front of the petition for the petition title drafted by the Secretary of State. There is no statutory provision authorizing a second title drafted by the circulators of the petition to appear on the petition.

2. The proposed amendment to Section 290.502 is headed "Section 1. Required Living Wage." Such heading does not reflect the words of the proposed statute in that the words "living wage" do not appear in the proposed statute. The use of the words "living wage" in the heading might be deemed advertising in favor of the adoption of the statutory amendment. Advertising on an initiative petition is not condoned by the courts. See *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 12 (Mo. banc 1981). Regardless of whether such language might be deemed advertising, we decline to approve the section heading because it does not fairly reflect the words of the proposed statute.

3. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows: "Nothing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
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P. O. Box 899
(314) 751-3321

January 16, 1996

OPINION LETTER NO. 127-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook,

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as A6.

We conclude the petition must be rejected as to form for the following reasons:

1. At the top of the back side of the initiative petition is the language "An Initiative to Reward Work by Creating a Living Wage." Such language appears to be a title for the initiative petition. Section 116.334, RSMo 1994, provides for the petition title to be drafted by the Secretary of State, and space is provided on the front of the petition for the petition title drafted by the Secretary of State. There is no statutory provision authorizing a second title drafted by the circulators of the petition to appear on the petition.

2. The proposed amendment to Section 290.502 is headed "Section 1. Required Living Wage." Such heading does not reflect the words of the proposed statute in that the words "living wage" do not appear in the proposed statute. The use of the words "living wage" in the heading might be deemed advertising in favor of the adoption of the statutory amendment. Advertising on an initiative petition is not condoned by the courts. See *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 12 (Mo. banc 1981). Regardless of whether such language might be deemed advertising, we decline to approve the section heading because it does not fairly reflect the words of the proposed statute.

3. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows: "Nothing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

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65102

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P. O. Box 899
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January 16, 1996

OPINION LETTER NO. 128-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook,

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as A7.

We conclude the petition must be rejected as to form for the following reasons:

1. The proposed amendment to Section 290.502 is headed "Section 1. Required Family Wage." Such heading does not reflect the words of the proposed statute in that the words "family wage" do not appear in the proposed statute. The use of the words "family wage" in the heading might be deemed advertising in favor of the adoption of the statutory amendment. Advertising on an initiative petition is not condoned by the courts. See *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 12 (Mo. banc 1981). Regardless of whether such language might be deemed advertising, we decline to approve the section heading because it does not fairly reflect the words of the proposed statute.

2. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows: "Nothing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
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P. O. Box 899
(314) 751-3321

January 16, 1996

OPINION LETTER NO. 129-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook,

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as A8.

We conclude the petition must be rejected as to form for the following reasons:

1. The proposed amendment to Section 290.502 is headed "Section 1. Required Living Wage." Such heading does not reflect the words of the proposed statute in that the words "living wage" do not appear in the proposed statute. The use of the words "living wage" in the heading might be deemed advertising in favor of the adoption of the statutory amendment. Advertising on an initiative petition is not condoned by the courts. See *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 12 (Mo. banc 1981). Regardless of whether such language might be deemed advertising, we decline to approve the section heading because it does not fairly reflect the words of the proposed statute.

2. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows: "Nothing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

The Honorable Rebecca McDowell Cook

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

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65102

JEREMIAH W. (JAY) NIXON
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P. O. Box 899
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January 16, 1996

OPINION LETTER NO. 130-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook,

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as B1.

We conclude the petition must be rejected as to form for the following reasons:

1. At the top of the back side of the initiative petition is the language "An Initiative to Raise the Missouri Minimum Wage." Such language appears to be a title for the initiative petition. Section 116.334, RSMo 1994, provides for the petition title to be drafted by the Secretary of State. There is no statutory provision authorizing a second title drafted by the circulators of the petition to appear on the petition.

2. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows: "Nothing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

The Honorable Rebecca McDowell Cook

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

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January 16, 1996

OPINION LETTER NO. 131-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook,

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as B2.

We conclude the petition must be rejected as to form for the following reason:

1. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows: "Nothing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

Because of our rejection of the form of the petition for the reason stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P. O. Box 899
(314) 751-3321

January 16, 1996

OPINION LETTER NO. 132-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook,

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as B3.

We conclude the petition must be rejected as to form for the following reasons:

1. At the top of the back side of the initiative petition is the language "An Initiative to Reward Work by Raising the Missouri Minimum Wage." Such language appears to be a title for the initiative petition. Section 116.334, RSMo 1994, provides for the petition title to be drafted by the Secretary of State. There is no statutory provision authorizing a second title drafted by the circulators of the petition to appear on the petition.

2. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows: "Nothing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

January 16, 1996

OPINION LETTER NO. 133-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook,

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as B4.

We conclude the petition must be rejected as to form for the following reasons:

1. At the top of the back side of the initiative petition is the language "An Initiative to Create a Family Wage." Such language appears to be a title for the initiative petition. Section 116.334, RSMo 1994, provides for the petition title to be drafted by the Secretary of State. There is no statutory provision authorizing a second title drafted by the circulators of the petition to appear on the petition.

2. The proposed amendment to Section 290.502 is headed "Section 1. Required Family Wage." Such heading does not reflect the words of the proposed statute in that the words "family wage" do not appear in the proposed statute. The use of the words "family wage" in the heading might be deemed advertising in favor of the adoption of the statutory amendment. Advertising on an initiative petition is not condoned by the courts. See *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 12 (Mo. banc 1981). Regardless of whether such language might be deemed advertising, we decline to approve the section heading because it does not fairly reflect the words of the proposed statute.

3. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows: "Nothing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

January 16, 1996

OPINION LETTER NO. 134-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook,

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as B5.

We conclude the petition must be rejected as to form for the following reasons:

1. At the top of the back side of the initiative petition is the language "An Initiative to Create a Living Wage." Such language appears to be a title for the initiative petition. Section 116.334, RSMo 1994, provides for the petition title to be drafted by the Secretary of State. There is no statutory provision authorizing a second title drafted by the circulators of the petition to appear on the petition.

2. The proposed amendment to Section 290.502 is headed "Section 1. Required Living Wage." Such heading does not reflect the words of the proposed statute in that the words "living wage" do not appear in the proposed statute. The use of the words "living wage" in the heading might be deemed advertising in favor of the adoption of the statutory amendment. Advertising on an initiative petition is not condoned by the courts. See *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 12 (Mo. banc 1981). Regardless of whether such language might be deemed advertising, we decline to approve the section heading because it does not fairly reflect the words of the proposed statute.

3. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows: "Nothing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
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P. O. Box 899
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January 16, 1996

OPINION LETTER NO. 135-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook,

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as B6.

We conclude the petition must be rejected as to form for the following reasons:

1. At the top of the back side of the initiative petition is the language "An Initiative to Reward Work by Creating a Living Wage." Such language appears to be a title for the initiative petition. Section 116.334, RSMo 1994, provides for the petition title to be drafted by the Secretary of State. There is no statutory provision authorizing a second title drafted by the circulators of the petition to appear on the petition.

2. The proposed amendment to Section 290.502 is headed "Section 1. Required Living Wage." Such heading does not reflect the words of the proposed statute in that the words "living wage" do not appear in the proposed statute. The use of the words "living wage" in the heading might be deemed advertising in favor of the adoption of the statutory amendment. Advertising on an initiative petition is not condoned by the courts. See *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 12 (Mo. banc 1981). Regardless of whether such language might be deemed advertising, we decline to approve the section heading because it does not fairly reflect the words of the proposed statute.

3. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows: "Nothing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
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P. O. Box 899
(314) 751-3321

January 16, 1996

OPINION LETTER NO. 136-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook,

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as B7.

We conclude the petition must be rejected as to form for the following reasons:

1. The proposed amendment to Section 290.502 is headed "Section 1. Required Family Wage." Such heading does not reflect the words of the proposed statute in that the words "family wage" do not appear in the proposed statute. The use of the words "family wage" in the heading might be deemed advertising in favor of the adoption of the statutory amendment. Advertising on an initiative petition is not condoned by the courts. See *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 12 (Mo. banc 1981). Regardless of whether such language might be deemed advertising, we decline to approve the section heading because it does not fairly reflect the words of the proposed statute.

2. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows: "Nothing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

January 16, 1996

OPINION LETTER NO. 137-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook,

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 5, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as B8.

We conclude the petition must be rejected as to form for the following reasons:

1. The proposed amendment to Section 290.502 is headed "Section 1. Required Living Wage." Such heading does not reflect the words of the proposed statute in that the words "living wage" do not appear in the proposed statute. The use of the words "living wage" in the heading might be deemed advertising in favor of the adoption of the statutory amendment. Advertising on an initiative petition is not condoned by the courts. See *Buchanan v. Kirkpatrick*, 615 S.W.2d 6, 12 (Mo. banc 1981). Regardless of whether such language might be deemed advertising, we decline to approve the section heading because it does not fairly reflect the words of the proposed statute.

2. The second section proposed for enactment is headed "Section 2. Prior Inconsistent Law Repealed." The first sentence under such section heading proposes the repeal of Section 290.500(3)(d). However, a second sentence follows: "Nothing in this statute shall preclude the legislature or any municipality from raising or expanding the coverage of the minimum wage." The second sentence apparently is intended to be enacted. We decline to approve the section heading because it does not fairly reflect the apparent intended enactment of this second sentence.

Because of our rejection of the form of the petition for the reasons stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

DISSOLUTION OF SPECIAL ROAD DISTRICTS:
ROAD DISTRICTS:

A special road district organized under § 233.320 *et seq.*, RSMo 1994, may not give away its revenues. Further, those districts may dissolve only in accordance with § 233.425.

January 29, 1996

OPINION NO. 139-96

The Honorable Don Summers
State Representative, District 2
State Capitol Building, Room 101-B
Jefferson City, Missouri 65101

Dear Representative Summers:

This opinion responds to your questions regarding the Unionville Special Road District ("District") within Putnam County. The District was formed under §§ 233.320 through 233.445.[1] These provisions govern special road districts created in counties which operate under a township organization form of county government, as Chapter 65 authorizes.

You provided the following facts as background for your questions. The boundaries of the District are almost identical to the boundaries of the city of Unionville. Only one and one-half miles of road within the District are outside the city's boundaries. In November 1993, the voters of the District authorized an extension of the ad valorem tax that raises revenue for the District. That tax is still in effect and the District receives revenue from it. Near the time the tax was authorized, the city of Unionville announced that it no longer wanted the District to maintain streets located in the city. Litigation followed regarding division of equipment, resulting in a settlement. The District sold the equipment it retained after the settlement, and at the time of your opinion request had approximately $117,000 on hand. The city now maintains the roads within its borders at its expense and, as a consequence, the District now maintains only a small stretch of roadway. Because it maintains so little roadway, but collects tax on all property within its boundaries, including property within the city, the District has excess funds from the tax levy.

Given this background, your questions are as follows:

1. May the District's Board give the District's excess revenue

[1] All statutory references, unless otherwise noted, are to the 1994 Revised Statutes of Missouri (RSMo).

away? If so, to whom and for what?

2. May the District dissolve merely by a vote of its Board?

Section 233.325.5 provides that a special road district incorporated under § 233.320 *et seq.* is "a political subdivision of the state for governmental purposes with all the powers mentioned in this section and such others as may be conferred by law." In City of Olivette v. Graeler, 338 S.W.2d 827, 835 (Mo. 1960), the Missouri Supreme Court found:

> In its strict and primary sense the term 'municipal corporation' applies only to incorporated cities, towns, and villages, having subordinate and local powers of legislation. * * * But in the larger and ordinarily accepted sense the term is applied to any public local corporation, exercising some function of government, and hence includes counties, school districts, townships under township organization, **special road districts** and drainage districts.

(emphasis ours) (quoting State ex rel. Caldwell v. Little River Drainage District, 236 S.W. 15, 16 (Mo. 1921)), overruled on other grounds by City of Town and Country v. St. Louis County, 657 S.W.2d 598, 606 (Mo. banc 1983).

In Laret Inv. Co. v. Dickman, 345 Mo. 449, 134 S.W.2d 65 (banc 1939), the Missouri Supreme Court found that a special road district was a municipal corporation. In State ex rel. Crites v. West, 509 S.W.2d 482, 484 (Mo. App. 1974), the Court of Appeals stated the general rule:

> Municipal corporations only possess expressly granted powers, and powers implied from or incident to those expressly granted powers. Any reasonable doubt concerning whether or not a municipal corporation possesses a given power must be resolved in the negative. Further, where the legislature has authorized a municipal corporation to exercise a power, and prescribed the manner in which it should be exercised, any other manner of exercising the power is denied to it.

We can find no authority, express or implied, for the District to give away its excess revenues. Thus, we conclude that the District has no power to donate its revenues.

You next inquired whether the District may dissolve merely by a vote of its Board. In that regard, § 233.425 provides:

> Whenever a petition, signed by the owners of a majority of the acres of land owned by residents of the county residing within the district organized under the provisions of sections 233.320 to 233.445, shall be filed with the county commission of any county in which such district is situated, setting forth the name of the district and the number of acres owned by each signer of such petition and the whole number of acres in such district, the county commission shall have power, if in its opinion the public good will be thereby advanced, to disincorporate such road district. No such road district shall be disincorporated until notice is published in at least one newspaper of general circulation in the county where the district is situated for four weeks successively prior to the hearing of such petition.

In State ex rel. Crites, supra., the dissolution of a fire protection district was at issue. There, the court found that there was no implied or inherent power of the board to dissolve the district, particularly where, as here, the legislature has specifically provided the method for dissolution. Thus, we conclude that the District may dissolve only in accordance with § 233.425. That statute sets forth a procedure involving much more than a vote of the Board.

## CONCLUSION

It is the opinion of this office that a special road district organized under § 233.320 *et seq.* may not give away its revenues. Further, those districts may dissolve only in accordance with § 233.425.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

January 29, 1996

OPINION LETTER NO. 142-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 22, 1996, is attached for reference. To distinguish this initiative petition from another submitted on the same topic on the same date, this initiative petition has been designated as A2.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

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P. O. Box 899
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January 29, 1996

OPINION LETTER NO. 143-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to changes in Chapter 290, RSMo. The proposed changes address the minimum wage. A copy of the initiative petition which you submitted to this office on January 22, 1996, is attached for reference. To distinguish this initiative petition from another submitted on the same topic on the same date, this initiative petition has been designated as B2.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

SCHOOLS:
TEACHERS:
TEACHERS' CERTIFICATES:

A parent educator employed in the parent education program authorized under Sections 178.691 to 178.699, RSMo 1994, is not subject to the minimum teacher's salary requirement of Section 163.172, RSMo 1994, even if the parent educator holds a valid teaching certificate.

June 5, 1996

OPINION NO. 145-96

The Honorable Steve Ehlmann
State Senator, District 23
State Capitol Building
Jefferson City, Missouri 65101

The Honorable Harriet Tatum Brown
State Representative, District 13
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Ehlmann and Representative Brown:

This opinion is in response to your question concerning whether parent educators are subject to the minimum teacher's salary requirement of Section 163.172, RSMo 1994. Your question asks:

> Under Missouri law, must a public school district that employs parent educators who hold valid teaching certificates, but whose sole function is to provide assistance to parents of students regarding parenting techniques and child development, pay such employees the minimum teacher salary [even though such employees do not fall within the statutory definition of "teacher" found in Section 163.011(11) Mo. Rev. Stat. (1994)]?

That part of your question which we have enclosed in brackets assumes that a parent educator is not a "teacher" as defined in Section 163.011(11), RSMo 1994. Whether or not a parent educator is a "teacher" is an issue that we will consider in addressing whether a parent educator who holds a valid teaching certificate must be paid the minimum teacher salary.

Sections 178.691 through 178.699, RSMo 1994, describe the parent education program offered by school districts. Relevant provisions are as follows:

> **178.691. Definitions.** – As used in sections 178.691 to 178.699, unless the context requires otherwise:
>
> * * *
>
> (4) **"Parent education"** includes the provision of resource materials on home learning activities, private and group educational guidance, individual and group learning experiences for the parent and child, and other activities that enable the parent to improve learning in the home.
>
> **178.693. Educational and screening programs – reimbursement by state.** – 1. School districts that offer an approved program of parent education shall be eligible for state reimbursement, pursuant to section 163.031, RSMo, subject to appropriations therefor for each participating family. If a school district fails or is unable to offer an approved program of parent education, the district shall enter into a contract which meets the requirements under section 178.697, with another district, public agency or state approved not for profit agency offering an approved program for such services. If the district finds that no approved program is available in another district, public agency, or through a state approved not for profit agency, it shall request the state department of elementary and secondary education to assist it in obtaining from an approved program, services at the reimbursable rate.
>
> * * *
>
> **178.695. Program review.** – 1. Programs shall be subject to review and approval under standards developed by the department of elementary and secondary education consisting of early childhood education and parents as teachers programs and published as an administrative rule under the provisions of chapter 536, RSMo.
>
> * * *

> **178.697. Costs not to exceed appropriations.** – 1. Funding for sections 178.691 to 178.699 shall be made available pursuant to section 163.031, RSMo, and shall be subject to appropriations made for this purpose.
>
> 2. Costs of contractual arrangements shall be the obligation of the school district of residence of each preschool child. Costs of contractual arrangements shall not exceed an amount equal to an amount reimbursable to the school districts under the provisions of sections 178.691 to 178.699. No program shall be approved or contract entered into which requires any additional payment by participants or their parents or guardians.
>
> 3. Payments for participants for programs outlined in section 178.693 shall be uniform for all districts or public agencies.

The statute providing a teacher's minimum salary, Section 163.172, RSMo 1994, states:

> **163.172. Minimum teacher's salary – information to be provided to general assembly – salary defined.** – 1. In school year 1994-95 and thereafter, the minimum teacher's salary shall be eighteen thousand dollars. Beginning in the school year 1996-97, for any full-time teacher with a master's degree and at least ten years teaching experience in a public school or combination of public schools, the minimum salary shall be twenty-four thousand dollars.
>
> * * *
>
> 4. As used in this section, the term **"salary"** shall be defined as the salary figure which appears on the teacher's contract and as determined by the local school district's basic salary schedule and does not include supplements for extra duties.
>
> 5. The minimum salary for any fully certificated teacher employed on a less than full-time basis by a school district, state

> school for the severely handicapped, the Missouri School for the Deaf, or the Missouri School for the Blind shall be prorated to reflect the amounts provided in subsections 1 and 2 of this section.

Section 163.011(11), RSMo 1994, defining "teacher" as the term is used in Chapter 163, RSMo, states:

> **163.011. Definitions.** – As used in this chapter unless the context requires otherwise:
>
> * * *
>
> (11) **"Teacher"** means any teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, school nurse, social worker, counselor or librarian who shall, regularly, teach or be employed for no higher than grade twelve more than one-half time in the public schools and who is certified under the laws governing the certification of teachers in Missouri;
>
> * * *

Section 163.172 provides a teacher's minimum salary. The first issue for consideration is whether "teacher," as used in Section 163.172 is to have the meaning given to that term by Section 163.011(11). When the legislature has adopted a specific meaning for a term, we are to follow that meaning. St. Louis Country Club v. Administrative Hearing Commission of Missouri, 657 S.W.2d 614, 617 (Mo. banc 1983); Labor's Educational and Political Club-Independent v. Danforth, 561 S.W.2d 339, 346 (Mo. banc 1977). Section 163.011 states that the definitions in that section apply in Chapter 163 unless the content requires otherwise. There is no language in Section 163.172 to indicate "teacher" as used in that section should be given any meaning other than that prescribed by Section 163.011(11). Therefore, we conclude that Section 163.011(11) provides the definition of "teacher" to be followed in applying Section 163.172.

The next issue for consideration is whether a parent educator is within the definition of "teacher" found in Section 163.011(11). Section 163.011(11) enumerates certain categories of persons as being within the definition: "teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, school nurse, social worker, counselor or librarian," subject to certain requirements. Section

178.691(4) describes "parent education" as providing "resource materials on home learning activities, private and group educational guidance, individual and group learning experiences for the parent and child, and other activities that enable the parent to improve learning in the home." Based on this description of "parent education," a parent educator is not a "teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, school nurse, social worker, counselor or librarian." Of those persons enumerated, there remains the question whether a parent educator might be deemed a "teacher" which is the first category of persons listed in Section 163.011(11). However, in describing "parent education" Section 178.691(4) does not use the word "teach" but instead describes parent education as "the provision of resource materials . . . ." Furthermore, Section 168.011, RSMo 1994, states that no person shall be employed to teach until he has received a valid certificate of license, but a parent educator is not required to have received a valid certificate of license. See Early Childhood Development Act Program Guidelines and Administrative Manual incorporated by reference into 5 CSR 50-270.010. Where the legislature has intended parent educators to be included within the provisions of a statute, it has expressly so stated. See Section 168.500, RSMo 1994, enumerating the persons to whom the career advancement program applies where included within the enumerated persons are "parents as teachers educators." Therefore, we conclude that a parent educator is not a "teacher" as that term is used in the enumeration of categories of persons listed in Section 163.011(11). Because a parent educator is not among the categories of persons enumerated in Section 163.011(11), the parent educator is not a "teacher" as defined in Section 163.011(11).

Because a parent educator is not a "teacher" as defined in Section 163.011(11), whether or not the parent educator holds a valid teaching certificate is irrelevant. Even if the parent educator holds a valid teaching certificate, the parent educator is not a "teacher" as defined in Section 163.011(11) and the minimum teacher's salary provisions in Section 163.172 do not apply.

## CONCLUSION

It is the opinion of this office that a parent educator employed in the parent education program authorized under Sections 178.691 to 178.699, RSMo 1994, is not subject to the minimum teacher's salary requirement of Section 163.172, RSMo 1994, even if the parent educator holds a valid teaching certificate.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

February 16, 1996

OPINION LETTER NO. 146-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1994. The statement which you have submitted is as follows:

> Shall Sections 290.500 and 290.502, RSMo 1994 be amended to: require all employers, except as otherwise provided in Sections 290.500 to 290.530, RSMo 1994, to pay their employees an hourly minimum wage of no less than $6.25 as of January 1, 1997; $6.50 as of January 1, 1998; $6.75 as of January 1, 1999; and beginning January 1, 2000, an additional fifteen cents per year thereafter; expand the statutory definition of "employee"; permit the legislature or any municipality to raise or expand minimum wage coverage; and provide for severability of any provision or application of the measure held invalid?

See our Opinion Letter No. 143-96.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

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February 16, 1996

OPINION LETTER NO. 147-96

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See our Opinion Letter No. 142-96.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

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February 26, 1996

OPINION LETTER NO. 148-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as A1.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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[1]The initiative petition contains a purported title. Section 116.334 provides for the Secretary of State to prepare the statement of purpose which, unless altered by a court, is the petition title. Our approval of the petition as to form should not be deemed approval of the petition title. We will consider the proposed statement of purpose prepared by your office upon its submission to us as provided by Section 116.334.

the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

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JEREMIAH W. (JAY) NIXON
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P. O. Box 899
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February 26, 1996

OPINION LETTER NO. 149-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as A2.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

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P. O. Box 899
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February 26, 1996

OPINION LETTER NO. 150-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as A3.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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[1]The initiative petition contains a purported title. Section 116.334 provides for the Secretary of State to prepare the statement of purpose which, unless altered by a court, is the petition title. Our approval of the petition as to form should not be deemed approval of the petition title. We will consider the proposed statement of purpose prepared by your office upon its submission to us as provided by Section 116.334.

the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
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P. O. Box 899
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February 26, 1996

OPINION LETTER NO. 151-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as A4.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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[1]The initiative petition contains a purported title. Section 116.334 provides for the Secretary of State to prepare the statement of purpose which, unless altered by a court, is the petition title. Our approval of the petition as to form should not be deemed approval of the petition title. We will consider the proposed statement of purpose prepared by your office upon its submission to us as provided by Section 116.334.

the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
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February 26, 1996

OPINION LETTER NO. 152-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as B1.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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[1]The initiative petition contains a purported title. Section 116.334 provides for the Secretary of State to prepare the statement of purpose which, unless altered by a court, is the petition title. Our approval of the petition as to form should not be deemed approval of the petition title. We will consider the proposed statement of purpose prepared by your office upon its submission to us as provided by Section 116.334.

the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
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P. O. Box 899
(314) 751-3321

February 26, 1996

OPINION LETTER NO. 153-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as B2.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
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JEREMIAH W. (JAY) NIXON
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P.O. Box 899
(314) 751-3321

February 26, 1996

OPINION LETTER NO. 154-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as B3.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

February 26, 1996

OPINION LETTER NO. 155-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as B4.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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Very truly yours,

JEREMIAH W. (JAY) NIXON
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P. O. Box 899
(314) 751-3321

February 26, 1996

OPINION LETTER NO. 156-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as C1.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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February 26, 1996

OPINION LETTER NO. 157-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as C2.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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February 26, 1996

OPINION LETTER NO. 158-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as C3.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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February 26, 1996

OPINION LETTER NO. 159-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as C4.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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February 26, 1996

OPINION LETTER NO. 160-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as D1.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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February 26, 1996

OPINION LETTER NO. 161-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as D2.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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February 26, 1996

OPINION LETTER NO. 162-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as D3.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

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P. O. Box 899
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February 26, 1996

OPINION LETTER NO. 163-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 16, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as D4.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

CONFLICT OF INTEREST:
SCHOOLS:
SCHOOL CONTRACTS:
SCHOOL DISTRICT EMPLOYEES:

An employee of a six-director school district located in a second, third or fourth class county does not violate Section 171.181, RSMo 1994, in selling commodities to the school district if the sale of such commodities does not violate Sections 105.450 to 105.458, RSMo 1994.

July 26, 1996

OPINION NO. 167-96

The Honorable Linda Bartelsmeyer
State Representative, District 132
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Bartelsmeyer:

This opinion is in response to your question asking:

> In making purchases, can a school district in a second, third or fourth class county in Missouri purchase goods or commodities from an employee of said school district?

Your opinion request does not refer to any specific factual situation about which you are concerned. Your opinion request indicates the purpose of your request is to clarify the law. Therefore, we will address your question in general terms rather than with respect to a specific factual situation.

Section 171.181, RSMo 1994, states:

> **171.181. Preference given Missouri products in making purchase--certain six-director school districts, board member selling to district prohibited, exceptions, penalty.**--In making purchases, the school board, officer, or employee of any school district shall give preference to all commodities, manufactured, mined, produced or grown within the state and to all firms, corporations or individuals doing business as Missouri firms, corporations, or individuals, when quality and price are approximately the same; provided, however, that any board member, officer or employee of a six-director school district, any portion of which is located in a first class county, selling or

> providing such commodities to the school district shall be guilty of a class A misdemeanor and shall forfeit his position with the school district and provided further that any board member, officer or employee of a six-director school district, any portion of which is located in a county of the second, third or fourth class, selling or providing such commodities to the school district except as provided in sections 105.450 to 105.458, RSMo, shall be guilty of a class A misdemeanor and shall forfeit his position with the school district. [Emphasis added].

The current version of Section 171.181 was enacted in 1989. See Laws of Missouri, 1989, pages 378, 381-382. Prior to the 1989 statutory change, the relevant provision in the prior version of Section 171.181 stated: ". . . provided, however, that any board member, officer or employee of a school district selling or providing such commodities to the school district shall be guilty of a misdemeanor and shall forfeit his position with the school district." Before the 1989 statutory amendment, board members, officers and employees of a school district were prohibited from selling or providing such commodities to the school district. The 1989 statutory amendment added the reference to six-director school districts and distinguished between six-director school districts, any portion of which is located in a first class county, and six-director school districts, any portion of which is located in a county of the second, third or fourth class.[1] When the legislature has altered an existing statute, such change is deemed to have an intended effect, and the legislature will not be charged with having done a meaningless act. State v. Sweeney, 701 S.W.2d 420, 423 (Mo. banc 1985). Where an absolute prohibition on the sale or providing of commodities existed before the 1989 statutory amendment, we presume that the 1989 statutory amendment was intended to have some effect such that an absolute prohibition no longer exists after the statutory amendment. The effect of the 1989 statutory amendment is to remove the absolute prohibition on a school board member, officer or employee of a six-director school district, any portion of which is located in a county of the second, third or fourth class, selling or providing commodities to the school district.

Every word, clause, sentence, and section of a statute should be given meaning. State v. Caldwell, 904 S.W.2d 81, 82 (Mo. App. 1995). To give effect to the phrase "except as provided in sections 105.450 to 105.458," the statute means that a board member, officer or employee of a six-director school district, any portion of which is located in a second, third or fourth class county, does not violate Section 171.181 if the selling or providing of such commodities does not violate Sections 105.450 to 105.458, RSMo.

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[1]Your question apparently relates to a school district solely within a second, third or fourth class county. Therefore, we need not address the situation of a school district which is partially located in a first class county and partially located in a second, third or fourth class county.

Because we have not been presented with a specific factual situation, it is not feasible for us to address whether a specific selling or providing of commodities violates any of the provisions of Sections 105.450 to 105.458. Relevant to most situations involving an employee of a school district[2] in a second, third or fourth class county is Section 105.454(2) which states:

> **105.454. Additional prohibited acts by certain elected and appointed public officials and employees, exceptions.**--No elected or appointed official or employee of the state or any political subdivision thereof, serving in an executive or administrative capacity, shall:
>
> * * *
>
> (2) Sell, rent or lease any property to any agency of the state, or to any political subdivision thereof in which he is an officer or employee or over which he has supervisory power and received consideration therefor in excess of five hundred dollars per year unless the transaction is made pursuant to an award on a contract let or sale made after public notice and in the case of property other than real property, competitive bidding, provided that the bid or offer accepted is the lowest received; [Emphasis added.]
>
> * * *

There is no violation of Section 105.454(2) if the consideration received is not in excess of $500 per year or the selling or providing of the commodity is after public notice, with competitive bidding, and the bid accepted is the lowest received.

## CONCLUSION

It is the opinion of this office that an employee of a six-director school district located in a second, third or fourth class county does not violate Section 171.181, RSMo 1994, in

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[2] In State v. Hodge, 841 S.W.2d. 658, 659-660 (Mo. banc 1992), the Missouri Supreme Court concluded that a school district was not a political subdivision for purposes of a prior version of Section 105.454. In 1991, the Missouri General Assembly added a definition for "political subdivision" in Section 105.450. See Laws of Missouri, 1991, pages 525, 527. Based on this statutory amendment in 1991, we conclude a school district is a "political subdivision" for purposes of Section 105.454, RSMo 1994.

selling commodities to the school district if the sale of such commodities does not violate Sections 105.450 to 105.458, RSMo 1994.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

March 1, 1996

OPINION LETTER NO. 169-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 21, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as E1.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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March 1, 1996

OPINION LETTER NO. 170-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article I, Section 3 of the Missouri Constitution. A copy of the initiative petition which you submitted to this office on February 21, 1996, is attached for reference. To distinguish this initiative petition from others submitted on the same topic on the same date, this initiative petition has been designated as E2.

We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

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March 1, 1996

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Dear Secretary Cook:

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We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

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We approve the petition as to form[1]. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of

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[1]The initiative petition contains a purported title. Section 116.334 provides for the Secretary of State to prepare the statement of purpose which, unless altered by a court, is the petition title. Our approval of the petition as to form should not be deemed approval of the petition title. We will consider the proposed statement of purpose prepared by your office upon its submission to us as provided by Section 116.334.

the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

CONCEALED WEAPONS:
FIREARMS:
PAWNBROKERS:

A person who pawns his concealable firearm is not required by Section 571.080, RSMo 1994, to obtain a permit to acquire a concealable firearm in order to redeem his concealable firearm from the pawnshop.

July 15, 1996

OPINION NO. 174-96

The Honorable Bill Alter
State Representative, District 90
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Alter:

This opinion is in response to your question asking:

> In reference to RSMo 571.080, is a person who pawned his handgun required to obtain a "permit to acquire a concealable firearm" from his local sheriff in order to redeem his handgun from said pawnshop?[1]

Section 571.080, RSMo 1994[2], states, in relevant part:

> **571.080. Transfer of concealable firearms without permit unlawful – exceptions – antique firearm defined – permit valid for thirty days – violation, penalty.** – 1. A person

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[1]We assume that the person had obtained a permit to acquire a concealable firearm at the time the firearm was initially acquired such that your question refers to the same person obtaining a second permit at the time of redeeming the firearm from the pawnshop. Furthermore, this opinion does not address any obligations of the pawnbroker to obtain a permit to acquire a concealable firearm upon making the "secured personal credit loan."

[2]This opinion only addresses the applicable Missouri state statutes. It does not address any Federal statutes or regulations that may be applicable.

commits the crime of transfer of a concealable firearm[3] without a permit if:

> (1) He buys, leases, borrows, exchanges or otherwise receives any concealable firearm, unless he first obtains and delivers to the person delivering the firearm a valid permit authorizing the acquisition of the firearm; or
>
> (2) He sells, leases, loans, exchanges, gives away or otherwise delivers any concealable firearm, unless he first demands and receives from the person receiving the firearm a valid permit authorizing such acquisition of the firearm.
>
> * * *
>
> 3. Subsection 1 of this section shall not apply to the acquisition by or transfer of concealable firearms among manufacturers, wholesalers or retailers of firearms for purposes of commerce; nor shall it apply to antique firearms or replicas thereof. . . .
>
> 4. Transfer of concealable firearms without a permit is a class A misdemeanor.

Relevant sections of the statutory provisions regarding pawnshops and pawnbrokers are as follows:

> **367.011. Definitions.** – As used in sections 367.011 to 367.060, the following words mean:
>
> * * *

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[3] "Concealable firearm" is defined as "any firearm with a barrel less than sixteen inches in length, measured from the face of the bolt or standing breech." § 571.010(2), RSMo 1994. "Firearm" is "any weapon that is designed or adapted to expel a projectile by the action of an explosive." § 571.010(5), RSMo 1994.

(3) **"Pawnbroker"**, any person engaged in the business of lending money on the security of pledged goods or engaged in the business of purchasing tangible personal property on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time;

(4) **"Pawnshop"**, the location at which or premises in which a pawnbroker regularly conducts business;

* * *

(6) **"Pledged goods"**, tangible personal property other than choses in action, securities, or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with a pawn transaction;

(7) **"Secured personal credit loan"**, every loan of money made in this state, the payment of which is secured by a security interest in tangible personal property which is physically delivered into the hands of the lender at the time of the making of the loan and which is to be retained by the lender while the loan is a subsisting obligation.

**367.031. Receipt for pledged property – contents – loss of, effect.** – 1. At the time of making any secured personal credit loan, the lender shall execute and deliver to the borrower a receipt for and describing the tangible personal property subjected to the security interest to secure the payment of the loan. The receipt shall contain the following:

(1) The name and address of the pawnshop;

(2) The name and address of the pledgor, the pledgor's description, and the driver's license number, military identification number, identification certificate number, or other official number capable of identifying the pledgor;

(3) The date of the transaction;

(4) An identification and description of the pledged goods, including serial numbers if reasonably available;

* * *

(8) The maturity date of the pawn transaction; and

(9) A statement to the effect that the pledgor is not obligated to redeem the pledged goods, and that the pledged goods may be forfeited to the pawnbroker sixty days after the specified maturity date.

2. The pawnbroker may be required, in accordance with local ordinances, to furnish local law enforcement authorities with copies of information contained in subdivisions (1) to (4) of subsection 1 of this section.

* * *

**367.040. Loans due, when – return of collateral, when – restrictions.** – 1. Every secured personal credit loan shall be due and payable in lump sum thirty days after the date of the loan contract, or, if extended, thirty days after the date of the last preceding extension of the loan, and if not so paid when due, it shall, on the next day following, be in default. The lender shall retain possession of the tangible personal property subjected to the security interest to secure payment of any secured personal credit loan for a period of sixty days next following the date of default. If, during the period of sixty days, the borrower shall pay to the lender the principal sum of the loan, with the loan fee or fees, and the interest due thereon to the date of payment, the lender shall thereupon deliver possession of the tangible personal property to the borrower. But if the borrower fails, during the period of sixty days, to make payment, then title to the tangible

personal property shall, on the day following the expiration of the period of sixty days, pass to the lender, without foreclosure, and the right of redemption by the borrower shall be forever barred.

* * *

3. Except as otherwise provided by sections 367.011 to 367.060, any person properly identifying himself and presenting a pawn ticket to the pawnbroker shall be presumed to be entitled to redeem the pledged goods described therein.

4. A pawnbroker shall not:

* * *

(5) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. . . . ; [Emphasis added].

* * *

**367.049. No criminal or civil liability for pawnbroker exercising due care and good faith.** – A licensed pawnbroker, or agent or employee of the licensed pawnbroker, who acts, pursuant to the provisions of sections 367.011 to 367.060, in good faith, exercises due care and follows the provisions of the law, shall not be subject to criminal or civil liability for any such act.

**367.050. Violation, penalty.** – 1. In addition to any other penalty which may be applicable, any person who is required to be licensed pursuant to section 367.043 who willfully violates any provision of sections 367.011 to 367.060 . . . shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not in excess of one thousand dollars, . . . .

Under the provisions of Chapter 367, the pawnbroker lends money on the security of pledged goods, a concealable firearm in the situation about which you are concerned. "Secured personal credit loan" is defined in Section 367.011(7) as the loan of money, the payment of which is secured by a security interest in the tangible personal property [concealable firearm] which is delivered into the hands of the lender and which is to be retained by the lender while the loan is a subsisting obligation.[4] However, under Section 367.040.1, title to the property does not pass to the lender except upon failure of the borrower to make payment to the lender within a specified time period. Section 367.040.1 requires the lender to "deliver possession of the tangible personal property to the borrower" if payment is made within a specified time period. Section 367.040.4(5) prohibits a pawnbroker from failing to return pledged goods to the pledgor upon payment of the full amount due. A pawnbroker failing to return the concealable firearm after payment of the amount due would be acting contrary to the express requirements of Section 367.040.

In Missouri Attorney General Opinion Letter No. 137, O'Brien, 1964, a copy of which is enclosed, this office opined regarding the concealable firearm permit requirement. There, the county coroner sometimes came into the possession of guns which were the instruments of death of persons. The coroner turned the guns over to relatives of the deceased when the owner of the gun was the deceased person. The concern was whether the coroner should require a gun permit from the recipient. This office opined that a permit was not needed where the gun was transferred to the executor or administrator of the decedent's estate, because that person "does not own such firearm but is a legal trustee and conduit for the purpose of distributing the estate of the decedent." (p. 2). A transfer to a person not the executor or administrator would require a permit, however. (p. 3). The statute requiring a permit at the time of the opinion, Section 564.630, RSMo 1959, used the words, "directly or indirectly buy, sell, borrow, loan, give away, trade, barter, deliver or receive," which is similar to the language set forth in Section 571.080, RSMo 1994.

In Taylor v. McNeal, 523 S.W.2d 148 (Mo. App. 1975), police officers responding to a disturbance seized two pistols. When the owner later requested the return of the pistols, the police refused, demanding that the owner first obtain permits to acquire a concealable firearm, pursuant to Section 564.630, RSMo 1969. The court held that the statute requiring a permit did not apply in that instance, adding that "[m]ere seizure by the police, which involves only temporary custody, does not change title nor right of possession to the property seized." Id. at 151. The court stated:

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[4]We assume the transaction about which you are concerned involves a "secured personal credit loan."

> [T]o otherwise construe this statute would produce absurd results which become apparent in the following situations.
>
> Here the police seized the pistols from [the owner] who peacefully delivered or relinquished possession in his home; yet the officers made no effort to obtain permits from the sheriff nor deliver such permits to [the owner] before the seizure. Similarly, during the course of this proceeding, [the police] delivered the pistols to the sheriff who received them without first acquiring permits from himself as sheriff. If [the owner] had delivered the pistols to his favorite gunsmith for repair, permits from the sheriff would not be contemplated. In such situations, it cannot reasonably be suggested the statute should or was intended to apply.

Id. The court noted that a literal interpretation of the permit-requirement statute would conflict with other statutes, and relied upon the rule of construction that statutes on the same subject matter should be harmonized if possible so that they do not conflict. Id.; accord State ex rel. Lebeau v. Kelly, 697 S.W.2d 312, 315 (Mo. App. 1985); Southwest Forest Industries, Inc. v. Loehr Employment Service of Kansas City, Inc., 543 S.W.2d 322, 324 (Mo. App. 1976). The court then stated:

> The intention of the legislature must be that the statute does not apply in such cases and the manifest intent of a legislative enactment will prevail over the literal sense of its terms. . . . Construction of statutes should avoid unjust, unreasonable, absurd or confiscatory results.

Taylor v. McNeal, 523 S.W.2d at 151-152; accord David Ranken, Jr. Technical Institute v. Boykins, 816 S.W.2d 189, 192 (Mo. banc 1991).

The provisions of Section 571.080, RSMo 1994, should be construed in harmony with the applicable provisions of Chapter 367, RSMo 1994, in determining the answer to your question. Chapter 367 requires a pawnbroker to return the concealable firearm to the borrower after payment of the amount due. Following the reasoning in Taylor v. McNeal, supra, we conclude a person who pawns his concealable firearm is not required by Section 571.080, RSMo 1994, to obtain a permit to acquire a concealable firearm in order to redeem his concealable firearm from the pawnshop. Such conclusion is consistent with Opinion Letter No. 137, O'Brien, 1964.

## CONCLUSION

It is the opinion of this office that a person who pawns his concealable firearm is not required by Section 571.080, RSMo 1994, to obtain a permit to acquire a concealable firearm in order to redeem his concealable firearm from the pawnshop.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

March 5, 1996

OPINION LETTER NO. 175-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article VIII of the Missouri Constitution by adopting new sections to be designated as Sections 8 through 14. A copy of the initiative petition which you submitted to this office on March 4, 1996, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

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ATTORNEY GENERAL

P. O. Box 899
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March 14, 1996

OPINION LETTER NO. 176-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Section 565.020(2), RSMo 1994, concerning the punishment for murder in the first degree. A copy of the initiative petition which you submitted to this office on March 7, 1996, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

March 13, 1996

OPINION LETTER NO. 177-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1994. The statement which you have submitted is as follows:

> Shall Article I, Section 3 of the Constitution of Missouri be amended to provide that the people of this state have the inherent, sole and exclusive right to not be taxed without their consent, and further amended to provide that no state tax, license or fee increase shall take effect unless the same shall have been approved by a majority of the qualified voters of this state voting at a general or special election?

See our Opinion Letters Nos. 148-96 through 163-96.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

March 13, 1996

OPINION LETTER NO. 178-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1994. The statement which you have submitted is as follows:

> Shall Article I, Section 3 of the Constitution of Missouri be amended to provide that the people of this state have the inherent, sole and exclusive right to not be taxed without their consent, and further amended to provide that no state tax, license or fee increase shall take effect unless the same shall have been approved by a majority of the qualified voters of this state voting at a general election?

See our Opinion Letters Nos. 169-96 through 172-96.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

March 20, 1996

OPINION LETTER NO. 179-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1994. The statement which you have submitted is as follows:

> Shall Article VIII of the Missouri Constitution be amended to provide that Missourians intend this initiative lead to adoption of an amendment to the United States Constitution establishing Congressional term limits and further amend Article VIII to provide for informing voters on all primary and general election ballots whether candidates for the state legislature support Congressional term limits by printing adjacent to all incumbent candidates who failed to support Congressional term limits "DISREGARDED VOTER INSTRUCTION ON TERM LIMITS" and printing adjacent to non-incumbent candidates who refuse to take a term limits pledge "DECLINED TO TAKE PLEDGE TO SUPPORT TERM LIMITS"?

See our Opinion Letter No. 175-96.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. BOX 899
(314) 751-3321

March 29, 1996

OPINION LETTER NO. 183-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1994. The statement which you have submitted is as follows:

> Shall § 565.020.2 of the Missouri Revised Statutes, which currently provides that, except for persons who have not reached sixteen years of age at the time of the commission of the crime, the punishment for first degree murder is either death or imprisonment for life without eligibility for probation, parole, or release except by act of the governor, be repealed and reenacted to provide that the punishment for first degree murder is imprisonment for life without eligibility for probation or parole, or release except by act of the governor?

See our Opinion Letter No. 176-96.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

BONDS:
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION:
HEALTH AND EDUCATIONAL FACILITIES AUTHORITY:
SCHOOL BONDS:
SCHOOLS:

(1) The effective date of Senate Bill No. 301, 88th General Assembly, First Regular Session (1995) is June 27, 1995, (2) grants authorized by Sections 360.111 to 360.118, RSMo Supp. 1995, are not available for new money bonds issued before June 27, 1995, (3) grants paid pursuant to Sections 360.111 to 360.118, RSMo Supp. 1995, should be paid after the end of the state fiscal year, (4) if there is inadequate funding to pay all grants authorized for new money bonds in a fiscal year, Sections 360.111 to 360.118, RSMo Supp. 1995, allow grants to be distributed proportionately among recipients of grants for new money bonds, (5) if there are adequate funds to pay all grants authorized for new money bonds in a fiscal year, the remaining funds should be used to pay grants authorized for refunding bonds, and (6) grants authorized in a prior year which were not paid, in whole or in part, because of inadequate funds are not to be paid from funds available in a subsequent year.

May 7, 1996

OPINION NO. 188-96

Dr. Robert E. Bartman
Commissioner of Education
Department of Elementary and Secondary Education
P.O. Box 480
Jefferson City, Missouri 65102-0480

Dear Dr. Bartman:

This opinion is in response to your questions concerning Senate Bill No. 301, 88th General Assembly, First Regular Session (1995) (hereinafter "Senate Bill No. 301"). Your questions are essentially as follows:

> 1. Should grants distributed pursuant to Sections 360.111 to 360.118, RSMo Supp. 1995, be available for new money bonds issued before the effective date of Senate Bill No. 301?
>
> 2. If the answer to Question 1 is "Yes," are refunding bonds closed prior to 1995 entitled to such a grant (i.e., those issued and closed 1992, etc.)?
>
> 3. If the answer to Question 1 is "No," what is deemed the applicable effective date of the law?

4. Should grants distributed pursuant to Sections 360.111 to 360.118 be distributed as soon as an issue is closed or delayed until the end of the state fiscal year?

5. Would Sections 360.111 to 360.118 allow proportional distribution of grants among all qualifying issues, if there were inadequate funds appropriated to cover the costs of all grants?

6. At what point in the year, or the state fiscal year, should grants for new money bonds be paid?

7. Would the Health and Educational Facilities Authority be required to delay payments until the end of the fiscal year to determine if there is adequate funding for new money funds before authorizing grants for refunding bonds?

8. If all funds appropriated during a fiscal year were distributed, would a bond issue receiving only a portion of its grant entitlement, or no grant entitlement, be eligible for amounts available in subsequent fiscal years?

9. Should refunding bonds from prior years be given any priority over new money bonds in the new fiscal year or be required to wait until the end of the fiscal year for a determination of whether there are funds available?

Your questions relate to the implementation of Senate Bill No. 301. In your opinion request, you describe the effect of Senate Bill No. 301 as follows:

> In 1995 the Missouri Legislature adopted Senate Bill No. 301 (the "Law") creating Sections 360.106 and 360.111 RSMo. [Section 360.111 as enacted by Senate Bill No. 301 has been codified in RSMo Supp. 1995 as Sections 360.111 to 360.118.] The Law directs the Health and Educational Facilities Authority of the State of Missouri (the "Authority") to develop guidelines for, and the administration of, voluntary methods relating to the issuance of general obligation bonds by Missouri school districts (the "Program"). It also grants certain rights and duties to the Missouri Department of Elementary and Secondary Education ("DESE"). There are the following two principal incentives for school districts to participate in the Program.

> First, in an effort to improve the credit quality of all school districts in Missouri, the Law, effectively, provides for credit enhancement by authorizing the direct deposit by the State of Missouri to a bank serving as trustee of a portion of state aid payments that would otherwise be paid directly to the involved school district pursuant to a direct deposit agreement. . . . The direct deposit will be equal to debt service on the school district bonds. This procedure results in a credit rating on the school district bonds based to a large extent on the credit quality of the State. Accordingly, the major credit rating agencies are willing to rate school district bonds in the Program in the second highest rating category (i.e. "AA"), resulting in lower interest rates on the school district bonds at no additional cost to the involved district or the State. Prior to this Program many such school district bonds were rated very low or could not be rated at all.
>
> Second, to assist the school districts with the costs involved in issuing such bonds, the Law provides for the Authority and DESE to coordinate the payment, if certain excess gaming revenues are annually received and appropriated by the State, of a grant to school districts for the lesser of two percent of the par amount of the bonds issued or the actual costs of issuance as determined by the Authority. Such grants may be paid in connection with general obligation bonds issued for either of the following purposes: (a) financing construction or renovation projects approved by voters after January 1, 1995 ("new money bonds"); or (b) refinancing construction or renovation projects or for refinancing of lease purchase obligations ("refunding bonds"). . . .
>
> The Legislature has appropriated $5 million for the July 1, 1995 - June 30, 1996 Fiscal Year pursuant to Section 164.303 RSMo. The Legislature may appropriate up to $7 million in future years pursuant to Section 164.303 RSMo.

Set forth below are the provisions of Senate Bill No. 301, as codified in RSMo Supp. 1995, most relevant to your questions:

> **360.113. Districts with direct deposit agreement eligible for one-time grant for each issue for construction or to refinance lease purchase grant, amount.** – 1. Any school district which has a direct deposit agreement with the authority pursuant to sections 360.111 to 360.118 shall be eligible to

receive a one-time grant for each issue based upon the par amount of general obligation bonds issued for the purpose of financing construction or renovation projects approved by voters after January 1, 1995, or refinancing construction or renovation projects or for refinance of lease purchase obligations with general obligation bonds.

2. Until July 1, 1997, the grant amount for a school district under subsection 1 of this section shall be the lesser of two percent of the par amount of the bonds issued or the actual costs of issuance as determined by the authority. [Emphasis added].

**360.114. Authority to determine grant amount, actual cost of issuance, when – transfers to be at no cost to school district.** – 1. On or before July 1, 1997, and every two years thereafter, the authority shall determine the weighted average, actual cost of issuance percentage for issuances under section 360.106 during the two years immediately preceding the date such determination is required.

2. On and after July 1, 1997, the grant amount for a school district under subsection 1 of section 360.113 shall be the lesser of the most recent weighted average, actual cost of issuance percentage, as determined by the authority pursuant to subsection 1 of this section, times the par amount of the bonds issued or the actual costs of issuance as determined by the authority. [Emphasis added].

* * *

**360.116. Payment of grants, procedure – refunding or refinancing existing bonds, net present value savings amount.** – 1. Payment of grants under sections 360.111 to 360.118 shall be made from funds appropriated for such purpose under section 164.303, RSMo. Payment shall be authorized by the commissioner of education upon receipt of the closing legal opinion for the bonds by the commissioner of education and a certification by the school district that the funds will be used for costs relating to projects approved under and satisfying the qualifications and requirements of subsection 1 of section 360.113. [Emphasis added].

* * *

> **360.117. Funding for grants less than amount of grants distributable, first priority construction or renovation projects.** – If the amount of funding available for grants under sections 360.111 to 360.118 is less than the total amount of grants distributable under sections 360.111 to 360.118 for qualifying issues, first priority for funding of grants shall be given to qualifying issues for financing of construction or renovation projects.

The first issue for consideration is the effective date of Senate Bill No. 301. Senate Bill No. 301 contains an emergency clause which states:

> Section B. Because of the need to facilitate the financing mechanisms for certain school districts in this state, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

Senate Bill No. 301 was approved on June 27, 1995, and thus, according to the provisions of Section B quoted above, is effective on that date.

One apparent concern is the validity of the emergency clause. Article III, Section 29 of the Missouri Constitution provides in part that laws passed by the General Assembly take effect 90 days after the adjournment of the session at which the law was enacted except in case of an emergency. See also Article III, Section 52(a) of the Missouri Constitution and Section 1.130, RSMo 1994. If the act does not in fact constitute an emergency measure, the law did not become effective until the expiration of the 90 day period. See State ex rel. City of Charleston v. Holman, 355 S.W.2d 946, 950 (Mo. banc 1962). The legislative declaration of an act to be an emergency measure is entitled to great weight but is not conclusive, because the courts possess the final authority to determine whether an emergency in fact exists. Osage Outdoor Advertising, Inc. v. State Highway Commission of Missouri, 687 S.W.2d 566, 569 (Mo. App. 1984). Through our opinions process, this office does not opine on the constitutionality of statutes enacted by the General Assembly. See Gershman Investment Corporation v. Danforth, 517 S.W.2d 33, 35 (Mo. banc 1974). This office customarily defends the laws enacted by the General Assembly. Where the General Assembly has determined that an emergency in fact exists, until a court rules to the contrary, we recommend your department consider the emergency clause valid and treat the effective date of Senate Bill No. 301 to be June 27, 1995.

Having concluded the effective date of Senate Bill No. 301 is June 27, 1995, we turn to your first numbered question asking if grants distributed pursuant to Sections 360.111 to 360.118 should be available for new money bonds (bonds for financing construction or renovation projects approved by voters after January 1, 1995) issued before the effective date of Senate Bill No. 301. With regard to retrospective application of laws, the general rule of law is:

> Generally, a statute may not be applied retrospectively. [citation omitted]. However, there are two recognized exceptions to this rule: (1) where the statute is procedural only and does not affect any substantive right of the parties, and (2) where the legislature manifests a clear intent that it be applied retrospectively. . . . A statute is substantive if it defines the rights and duties giving rise to the cause of action. [citation omitted]. It is procedural if it prescribes the method of enforcing rights and carrying on the suit. [citation omitted]. Substantive statutes take away or impair vested rights acquired under existing law, or create a new obligation or impose a new duty. [citation omitted].

Brennecka v. Director of Revenue, 855 S.W.2d 509, 511 (Mo. App. 1993); accord Callahan v. Cardinal Glennon Hospital, 863 S.W.2d 852, 872 (Mo. banc 1993).

It is our opinion that the provisions of Senate Bill No. 301 are not to be applied retrospectively. The provisions are not simply procedural, nor has the legislature expressed a clear intent that there be retrospective application. Although Section 360.113 refers to bonds issued for the "purpose of financing construction and renovation projects approved by voters after January 1, 1995," we do not consider such language as indicating a legislative intent to retrospectively apply the provisions of Senate Bill No. 301 to bonds approved by voters after January 1, 1995, and issued before the effective date of the bill. We recognize that school bonds for construction and renovation projects are usually issued several months, and sometimes several years, after the date of the election approving the bonds. Grants authorized by Senate Bill No. 301 are based on the issuance of the bonds. See Section 360.116.1. In fact, we recognize that some bonds approved by voters may never be issued. While Section 360.113 limits grants to bonds approved by voters after January 1, 1995, we do not consider such language to manifest a clear legislative intent to apply the provisions of Senate Bill No. 301 to bonds approved by voters after January 1, 1995, but issued before the effective date of Senate Bill No. 301, June 27, 1995. Therefore, grants authorized by Sections 360.111 to 360.118 are not available for new money bonds issued before the effective date of the bill, June 27, 1995.

With regard to your remaining questions, statutory "[c]onstruction must always seek to find and further [legislative] intent." Centerre Bank of Crane v. Director of Revenue, 744 S.W.2d 754, 759 (Mo. banc 1988). When a statute is not explicit:

> but confers powers and duties in general terms, there may be resort to the necessary implications and intendments of the language to determine legislative intent. [citation omitted]. An implied power within this meaning is a power necessary for the efficient exercise of the power expressly conferred. In that sense, that which is implied in a statute is as much a part of it as that which is expressed.

AT & T Information Systems, Inc., v. Wallemann, 827 S.W.2d 217, 223-224 (Mo. App. 1992).

Your question numbered 4 asks if grants distributed pursuant to Sections 360.111 to 360.118 should be paid as soon as an issue is closed (the bonds are delivered to the buyer and the issuer receives the money) or delayed until the end of the state fiscal year. Your questions numbered 6 and 7 pose similar questions. We conclude that grants should not be paid until after the end of the state fiscal year when the information is available to calculate the amount to be paid to each recipient of a grant. Section 360.117 recognizes that the funding available for grants may be less than the amount of grants to be distributed pursuant to Sections 360.111 to 360.118. Under Section 360.117 first priority shall be given to grants relating to new money bonds. At the time a bond issue is closed, it is not possible to know if funds will be available to pay grants for all bonds issued during that fiscal year. For example, if a bond issue is closed in September, 1996, it is not possible to know at that time the number and amount of bond issues that may be closed during the remainder of the fiscal year ending June 30, 1997 (fiscal year 1997). It would not be possible to know in September, 1996, whether there are sufficient funds for fiscal year 1997 available to pay 100% of all grants to be distributed during fiscal year 1997 pursuant to Sections 360.111 to 360.118. The law favors construing statutes in harmony with reason and common sense and to avoid unreasonable results. Shands v. City of Kennett, 756 F.Supp. 420, 422 (E.D. Mo. 1991). The most reasonable procedure for complying with Section 360.117's requirement to give priority to grants relating to new money bonds is to make the necessary calculations after the end of the state's fiscal year when the necessary information is available. Therefore, we conclude that grants should be paid after the end of the fiscal year when the information is available to calculate the amount to be paid to each recipient of a grant for that fiscal year.

In reaching the conclusion that grants should be paid after the end of the fiscal year, we recognize that Section 360.116.1 provides that payment of grants shall be authorized by the Commissioner of Education upon receipt of the closing legal opinion for the bonds and a school district certification relating to the bonds. "Authorize" means "[t]o empower; to give a right or authority to act; . . . [t]o permit a thing to be done in the future." Black's Law

Dictionary 133 (6th ed. 1990). The language of Section 360.116.1 does not indicate that payment is necessarily to be made upon receipt of the closing legal opinion and school district certificate, only that upon receipt of the closing legal opinion and school district certificate there is the authority (the power) to make payment.

Your question numbered 5 asks if Sections 360.111 to 360.118 allow proportional distribution of grant monies in the event of inadequate funding. Section 360.113.1 does not, by its words, guarantee a school district a grant -- the word used is "eligible." Section 360.117 anticipates that there may be less funding available than grants authorized. Section 360.117 states that when there is insufficient funding, priority is to be given to "qualifying issues for financing of construction or renovation projects" (new money bonds) over refunding bonds. As discussed previously, we concluded grant monies are to be paid after the end of the fiscal year. "The legislature is presumed to have intended a logical result, rather than an absurd or unreasonable one." Angoff v. M & M Management Corp., 897 S.W.2d 649, 654 (Mo. App. 1995); accord David Ranken, Jr. Technical Institute v. Boykins, 816 S.W.2d 189, 192 (Mo. banc 1991).

Thus, it is our opinion that in the event of inadequate funding, first priority is to be given grants for new money bonds, and if there is inadequate funding to cover all such grants in full, Sections 360.111 to 360.118 allow the grants to be distributed proportionately among those school districts authorized to receive grants for new money bonds. For example, if the grants authorized for a fiscal year for new money bonds are $10 million, the grants authorized for refunding bonds are $6 million, and the funds available are $7 million, the $7 million in available funds may be paid proportionately to the school districts authorized to receive the $10 million in grants for new money bonds. Each of those school districts would receive 70% of the grant for new money bonds which it is authorized to receive. School districts authorized to receive the $6 million in grants for refunding bonds would receive nothing because of the provision in Section 360.117 granting priority to grants for new money bonds.

If there are adequate funds to pay all the grants for new money bonds, the remaining funds would be used to pay the grants for refunding bonds. As an example, for a fiscal year, assume $5 million in grants authorized for new money bonds, $4 million in grants authorized for refunding bonds, and funds available of $7 million. There would be adequate funds available to pay all grants authorized for new money bonds ($5 million). That would leave $2 million ($7 million minus $5 million) available to pay the $4 million in grants authorized for refunding bonds. Sections 360.111 to 360.118 would allow proportional distribution such that each school district authorized to receive a grant for refunding bonds would receive 50% of the grant authorized for the refunding bonds.

Your final two questions concern the payment in subsequent years of grants which were authorized in a prior year but which were not paid, in whole or in part, because of inadequate funds. The issue raised by your questions numbered 8 and 9 is whether the grants authorized but not paid should be paid from funds available in a subsequent year.

Section 360.113.1 refers to the grants as "a one-time grant for each issue." Section 360.117 recognizes that there may not be sufficient funds available to pay all grants authorized. There is no statutory language indicating a legislative intent that grants authorized for a prior year are to be paid from funds available in a subsequent year. Therefore, we conclude that grants authorized for a prior year which were not paid, in whole or in part, because of inadequate funds are not to be paid from funds available in a subsequent year.

## CONCLUSION

It is the opinion of this office that (1) the effective date of Senate Bill No. 301, 88th General Assembly, First Regular Session (1995) is June 27, 1995, (2) grants authorized by Sections 360.111 to 360.118, RSMo Supp. 1995, are not available for new money bonds issued before June 27, 1995, (3) grants paid pursuant to Sections 360.111 to 360.118, RSMo Supp. 1995, should be paid after the end of the state fiscal year, (4) if there is inadequate funding to pay all grants authorized for new money bonds in a fiscal year, Sections 360.111 to 360.118, RSMo Supp. 1995, allow grants to be distributed proportionately among recipients of grants for new money bonds, (5) if there are adequate funds to pay all grants authorized for new money bonds in a fiscal year, the remaining funds should be used to pay grants authorized for refunding bonds, and (6) grants authorized in a prior year which were not paid, in whole or in part, because of inadequate funds are not to be paid from funds available in a subsequent year.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

CONCEALED WEAPONS: Section 506.145, RSMo 1994, does not permit all persons over the age of 18 years to carry a concealed firearm.

April 9, 1996

OPINION NO. 190-96

The Honorable Bill Kenney
State Senator, District 8
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Kenney:

This opinion is in response to your question asking:

> Do Supreme Court Rule 54.13(a) and Section 506.145, RSMo, taken in conjunction permit a person over the age of 18 years to carry a concealed firearm?

Section 506.145, RSMo 1994, to which you refer in your question, provides:

> **506.145. Process server authorized to carry concealed firearm.** – Any person authorized to issue or serve process is authorized to carry a concealed firearm, the provisions of any other law to the contrary notwithstanding.

Missouri Supreme Court Rule 54.13(a), to which you also refer in your question, provides:

> **RULE 54.13 PERSONAL SERVICE WITHIN THE STATE**
>
> **(a) By Whom Made.** Service of process within the state, except as otherwise provided by law, shall be made by the sheriff or a person over the age of 18 years who is not a party to the action.
>
> * * *

Section 506.145 provides that any person authorized to issue or serve process is authorized to carry a concealed firearm. Rule 54.13(a) sets forth certain requirements for a person to be eligible to serve process, i.e., over the age of 18 years and not a party to the action. Just because a person meets the eligibility requirements of Rule 54.13(a) does not mean the person is authorized to serve process.

Section 506.140, RSMo 1994, addresses who is authorized to serve process. Such section provides:

> **506.140. Who shall serve process – fees paid to special process server may be taxed as costs in a claim.** – 1. Service of process, except as otherwise provided, shall be made by a sheriff, or his deputy, or in case the sheriff in any cause is for any reason disqualified, then process may be issued to and served by the coroner of the county in which such process is to be served; or some person, other than a sheriff or coroner, may be specially appointed by the court or the circuit clerk following procedures established by local court rules for service of process in any cause, but such appointment shall be valid for service of the process only for which such person was specially appointed.
>
> 2. A party may file an application to the court requesting that any fees paid to a special process server be taxed as costs in the action. The court may order a reasonable amount of such fees as costs.

Section 506.140 indicates that only the sheriff, his deputy, a specially appointed process server, or in some instances the county coroner, are authorized to serve process. See also Supreme Court Rule 54.01. The authorization to serve process is not so broad as to include all persons over the age of 18 years. Therefore, the authorization to carry a concealed firearm in Section 506.145 is not so broad as to include all persons over the age of 18 years.

Furthermore, Section 506.145 should be construed consistently with other statutes involving similar subject matter. "We are mindful that in construing a statute we may take into consideration statutes involving similar or related subject matter when such statutes shed light upon the meaning of the statute being construed. [Citation omitted]. This is so even though the statutes are found in different chapters and were enacted at different times." Weber v. Missouri State Highway Commission, 639 S.W.2d 825, 829 (Mo. 1982); accord Angoff v. M & M Management Corporation, 897 S.W.2d 649, 654 (Mo. App. 1995). "Statutes relating to the same subject are to be considered together and harmonized if possible so as to give meaning to all provisions of each." State ex rel. Lebeau v. Kelly, 697 S.W.2d 312, 315 (Mo. App. 1985). "As a primary rule of construction, courts generally attempt to reconcile and harmonize statutes or rules that appear to be in conflict if it is reasonably possible to do so." Southwest Forest Industries, Inc. v. Loehr Employment Service of Kansas City, Inc., 543 S.W.2d 322, 324 (Mo. App. 1976). "Unless two statutes are irreconcilably inconsistent, both must stand." Nicolai v. City of St. Louis, 762 S.W.2d 423, 426 (Mo. banc 1988).

Section 571.030, RSMo Supp. 1995, sets forth the crime of carrying a concealed firearm and enumerates those groups of persons to whom the criminal provisions are not applicable. The relevant provisions of such section are:

> **571.030. Unlawful use of weapons – exceptions – penalties.** – 1. A person commits the crime of unlawful use of weapons if he knowingly:
>
> (1) Carries concealed upon or about his person a knife, a firearm, a blackjack or any other weapon readily capable of lethal use; or
>
> * * *
>
> 2. Subdivisions (1), . . . of subsection 1 of this section shall not apply to or affect any of the following:
>
> (1) All state, county and municipal law enforcement officers possessing the duty and power of arrest for violation of the general criminal laws of the state or for violation of ordinances of counties or municipalities of the state, or any person summoned by such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;
>
> * * *
>
> (5) Any person whose bona fide duty is to execute process, civil or criminal;
>
> * * *

Section 506.145 should be construed consistently with Section 571.030.2(5). To that end, we need to determine and reconcile the meanings of "[a]ny person authorized to issue or serve process" in Section 506.145 and "[a]ny person whose bona fide duty is to execute process" in Section 571.030.2(5).

"[U]ndefined words are given their plain and ordinary meaning as found in the dictionary in order to ascertain the intent of lawmakers." Asbury v. Lombardi, 846 S.W.2d 196, 201 (Mo. banc 1993). The meaning to be given to specific words and phrases depends to some extent upon the context in which they are used. City of Willow Springs v. Missouri State Librarian, 596 S.W.2d 441, 445 (Mo. banc 1980).

BLACK'S LAW DICTIONARY 177, 505 (6th ed. 1990), provides the following definitions:

> **Bona fide.** . . . Truly; actually; without simulation or pretense. . . . Real, actual, genuine, and not feigned.
>
> * * *
>
> **Duty.** . . . Obligatory conduct or service. Mandatory obligation to perform. . . .
>
> Those obligations of performance, care, or observance which rest upon a person in an official or fiduciary capacity; . . . .
>
> * * *

Section 571.030.2(5) indicates that only those who have an actual obligation to serve process are within the group of persons to whom the crime of carrying a concealed firearm is not applicable. Interpreting Section 506.145 consistently with Section 571.030.2(5) further supports our conclusion that the authorization to carry a concealed firearm in Section 506.145 is not so broad as to include all persons over the age of 18 years.

## CONCLUSION

It is the opinion of this office that Section 506.145, RSMo 1994, does not permit all persons over the age of 18 years to carry a concealed firearm.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

April 29, 1996

OPINION LETTER NO. 196-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article VIII of the Missouri Constitution by adopting new sections to be designated as Sections 15 through 22. A copy of the initiative petition which you submitted to this office on April 25, 1996, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

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P. O. Box 899
(314) 751-3321

May 17, 1996

OPINION LETTER NO. 199-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1994. The statement which you have submitted is as follows:

> Shall Article VIII of the Missouri Constitution be amended to provide that Missourians intend this initiative lead to adoption of an amendment to the United States Constitution establishing Congressional term limits and further amend Article VIII to provide the Secretary of State shall determine and inform voters on election ballots whether candidates for Congress support Congressional term limits by printing adjacent to incumbent candidates who failed to support Congressional term limits "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" and printing adjacent to non-incumbent candidates who refuse to take a term limits pledge "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS?"

See our Opinion Letter No. 196-96.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

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ATTORNEY GENERAL

P. O. Box 899
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May 24, 1996

OPINION LETTER NO. 200-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the addition of one new statutory section concerning marriages. A copy of the initiative petition which you submitted to this office on May 23, 1996, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

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ATTORNEY GENERAL

P. O. Box 899
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June 6, 1996

OPINION LETTER NO. 203-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1994. The statement which you have submitted is as follows:

> Shall a law be enacted to declare it the public policy of this state to recognize the marriage only between one man and one woman and further provide that what purports to be a marriage between persons of the same sex shall not be considered a valid marriage, nor shall such unions be entitled to the benefits of marriage and any marriage entered into by persons of the same sex where the marriage license is issued by another state shall be invalid in this state?

See our Opinion Letter No. 200-96.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

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P. O. Box 899
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June 24, 1996

OPINION LETTER NO. 207-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article VIII of the Missouri Constitution by adopting new sections to be designated as Sections 8 through 14. A copy of the initiative petition which you submitted to this office on June 18, 1996, is attached for reference.

We approve the petition as to form.[1] However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the

[1]The initiative petition contains a purported title. Section 116.334 provides for the Secretary of State to prepare the statement of purpose which, unless altered by a court, is the petition title. Our approval of the petition as to form should not be deemed approval of the petition title. We will consider the proposed statement of purpose prepared by your office upon its submission to us as provided by Section 116.334.

adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

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P. O. Box 899
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June 24, 1996

OPINION LETTER NO. 208-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article VIII of the Missouri Constitution by adopting new sections to be designated as Sections 15 through 22. A copy of the initiative petition which you submitted to this office on June 18, 1996, is attached for reference.

We approve the petition as to form.[1] However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the

[1]The initiative petition contains a purported title. Section 116.334 provides for the Secretary of State to prepare the statement of purpose which, unless altered by a court, is the petition title. Our approval of the petition as to form should not be deemed approval of the petition title. We will consider the proposed statement of purpose prepared by your office upon its submission to us as provided by Section 116.334.

adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

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ATTORNEY GENERAL

P. O. Box 899
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July 1, 1996

OPINION LETTER NO. 213-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1994. The statement which you have submitted is as follows:

> Shall Article VIII of the Missouri Constitution be amended to provide that Missourians intend this initiative lead to adoption of an amendment to the United States Constitution establishing Congressional term limits and further amend Article VIII to provide for informing voters on all primary and general election ballots whether candidates for the state legislature support Congressional term limits by printing adjacent to all incumbent candidates who failed to support Congressional term limits "DISREGARDED VOTER INSTRUCTION ON TERM LIMITS" and printing adjacent to non-incumbent candidates who refuse to take a term limits pledge "DECLINED TO TAKE PLEDGE TO SUPPORT TERM LIMITS"?

See our Opinion Letter No. 207-96.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

July 1, 1996

OPINION LETTER NO. 214-96

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1994. The statement which you have submitted is as follows:

> Shall Article VIII of the Missouri Constitution be amended to provide that Missourians intend this initiative lead to adoption of an amendment to the United States Constitution establishing Congressional term limits and further amend Article VIII to provide the Secretary of State shall determine and inform voters on election ballots whether candidates for Congress support Congressional term limits by printing adjacent to incumbent candidates who failed to support Congressional term limits "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" and printing adjacent to non-incumbent candidates who refuse to take a term limits pledge "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS?"

See our Opinion Letter No. 208-96.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

COSMETOLOGIST:
COSMETOLOGY, BOARD OF:
PROFESSIONAL REGISTRATION, DIVISION OF:
RULES AND REGULATIONS:

Chapter 329, RSMo, and 4 CSR 90-2.010(5)(D) require actual, documented school attendance in the minimum number of hours specified by statute before cosmetology students can be licensed.

July 24, 1996

OPINION NO. 218-96

The Honorable John T. Russell
State Senator, District 33
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Russell:

This opinion is in response to your question concerning the minimum training hours requirement for persons seeking licensure as a cosmetologist. You state your question as follows:

> Most states have a statute and/or regulation which requires a candidate for a cosmetology license to have completed a training program of a set number of hours (typically 1500 hours). Frequently in the regulations to implement this statute, the State Board of Cosmetology requires proof that a student was physically present at the school for each hour of the training program. My question is that as long as the program is the required length (1500 hours) and the graduate has completed the program satisfactorily must he/she demonstrate physical presence for each hour of the course?

In responding to your question, we confine our opinion to Missouri law.

Chapter 329, RSMo, contains the statutory provisions governing licensure of cosmetologists. Various provisions are relevant to your question. Section 329.050, RSMo Supp. 1995, states in relevant part:

> 1. Applicants for examination or licensure under this chapter shall possess the following qualifications:
>
> * * *
>
> (3) If the applicants are students, they shall have had the required time in a licensed school of no less than one thousand five hundred hours training for the classification of cosmetologist, with the exception of public vocational technical schools in which a student shall complete no less than one thousand two hundred twenty hours training. All students shall complete no less than three hundred fifty hours for the classification of manicurist. All students shall complete no less than seven hundred fifty hours for the classification of esthetician. However, when the classified occupation of manicurist is taken in conjunction with the classified occupation of cosmetologist, the student shall not be required to serve the extra three hundred fifty hours otherwise required to include manicuring of nails; and [Emphasis added].
>
> * * *

Section 329.040.3, RSMo Supp. 1995, which addresses the licensure requirements for schools of cosmetology, states in relevant part:

> 3. No school of cosmetology shall be granted a license under this chapter unless it:
>
> * * *
>
> (3) Requires for the classified occupation of cosmetologist, the course of study shall be no less than one thousand five hundred hours or, for a student in public vocational/technical school no less than one thousand two hundred twenty hours. The student must earn a minimum of one hundred and sixty hours of classroom training before the student may perform any of the acts of the classified occupation of cosmetology on any patron or customer of the school of cosmetology; [Emphasis added].
>
> * * *

Section 329.040.4, RSMo Supp. 1995, listing in detail the subjects required to be taught by schools of cosmetology for the classified occupation of cosmetology, and including a minimum hours requirement for each subject, states:

> 4. The subjects to be taught for the classified occupation of cosmetology shall be as follows and the hours required for each subject shall be not less than those contained in this subsection:
>
> (1) Shampooing of all kinds, forty hours;
>
> (2) Hair coloring, bleaches and rinses, one hundred thirty hours;
>
> (3) Hair cutting and shaping, one hundred thirty hours;
>
> (4) Permanent waving and relaxing, one hundred twenty-five hours;
>
> (5) Hairsetting, pin curls, fingerwaves, thermal curling, two hundred twenty-five hours;
>
> (6) Combouts and hair styling techniques, one hundred five hours;
>
> (7) Scalp treatments and scalp diseases, thirty hours;
>
> (8) Facials, eyebrows and arches, forty hours;
>
> (9) Manicuring, hand and arm massage and treatment of nails, one hundred ten hours;
>
> (10) Cosmetic chemistry, twenty-five hours;
>
> (11) Salesmanship and shop management, ten hours;
>
> (12) Sanitation and sterilization, thirty hours;
>
> (13) Anatomy, twenty hours;
>
> (14) State law, ten hours;

> (15) Curriculum to be defined by school, not less than four hundred seventy hours.

State regulations concerning cosmetology, specifically 4 CSR 90-2.010(5)(D), require actual attendance at the school for each hour needed to sit for examination. Such rule provides in part:

> . . . The phrase, training hours, is defined as the number of hours a student was in attendance at the school and for which time the school kept a record of those hours for instruction or training.

This regulation requires actual, documented attendance at the school in the specified minimum number of hours.

Chapter 329, RSMo, grants the state board of cosmetology the power to make rules on various matters. See, for example, Sections 329.035, 329.080, 329.100, and 329.210, RSMo Supp. 1995 and Sections 329.230 and 329.240, RSMo 1994. "The well-established rule is that regulations may be promulgated only to the extent of and within the delegated authority of the statute involved." Parmley v. Missouri Dental Board, 719 S.W.2d 745, 755 (Mo. banc 1986). See Missouri Attorney General Opinion No. 58, McBrayer, 1964, a copy of which is enclosed, regarding the authority of the state board of cosmetology to promulgate rules. "Rules and regulations issued under an act are to be sustained unless unreasonable and plainly inconsistent with the act and are not to be overturned except for weighty reasons." Four Rivers Home Health Care, Inc. v. Director of Revenue, 860 S.W.2d 2, 4 (Mo. App. 1993).

The issue for consideration is whether 4 CSR 90-2.010(5)(D) explicitly defining training hours as actual, documented hours in attendance at the school is consistent with the statute. Words contained in a statute should be given their plain and ordinary meaning. McCollum v. Director of Revenue, 906 S.W.2d 368, 369 (Mo. banc 1995). Section 329.050.1(3) refers to the hours as being "required time in a licensed school" and as being "hours training." Such subsection also states the student is not "required to serve" certain hours if the occupation of manicurist is taken in conjunction with the occupation of cosmetologist. The plain and ordinary meaning of these phrases is consistent with the hours being actual hours in attendance at the school.

Furthermore, Section 329.040.4 lists in detail the subjects required to be taught and includes a minimum hours requirement for each. Some of the subjects require as few as ten hours of training. If the specified number of hours did not refer to actual hours in attendance, a student might miss ten hours of school and miss all of the hours relating to a specific

subject required by statute. By interpreting the statute to require students to be in attendance for the specified number of hours, the student will receive the training required by statute.

## CONCLUSION

It is the opinion of this office that Chapter 329, RSMo, and 4 CSR 90-2.010(5)(D) require actual, documented school attendance in the minimum number of hours specified by statute before cosmetology students can be licensed.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure